



*Alabama Department  
of Revenue*



## *Commissioner's Office*

### *General Procedures*

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#### **810-1-1-.01 Department of Revenue, Creation and Organizational Structure.**

The Department of Revenue (hereafter referred to as the department) is created by authority of §40-2-1, Code of Alabama 1975, and is headed by the Commissioner of Revenue hereafter referred to as the commissioner). In the absence of the commissioner, the Assistant Commissioner of Revenue shall direct the operations of the department. The organizational structure of the department is at the discretion of the commissioner. The individuals that head the various divisions of the department are appointed by the commissioner. (Sections 40-2A-7(a)(5) and 40-2-1, Code of Alabama 1975) (Adopted through APA effective October 1, 1982, amended June 17, 1999)

#### **810-1-1-.02.01 Delegation of Authority by Commissioner to the Assistant Commissioner.**

The Commissioner, as head of the Department has delegated authority as follows: To the Assistant Commissioner of the Department to act on behalf of the Commissioner in all matters, and shall perform such duties as are assigned to him by the Commissioner of Revenue. The Assistant Commissioner and the Secretary shall direct day-to-day policies of the Commissioner's office. The Assistant Commissioner shall assume the duties of the office of the Commissioner of Revenue in the Commissioner's absence. The office of Assistant Commissioner falls under the provisions of the State Merit System as provided now or hereafter by Chapter 26 of Title 36 of the Code of Alabama 1975. (Sections 40-2A-7(a)(5) and 40-2-44, Code of Alabama 1975) (Adopted through APA effective October 1, 1982, amended June 17, 1999)

## **810-1-1-.05 Regulations for the Control of Funds Advanced to pay Travel Expenses.**

Pursuant to the authority vested in the Commissioner of Revenue by Act No. 394, Regular Session of the Legislature 1967, the following regulation with respect to advance payment of travel expense of employees of the Department of Revenue on out-of-state travel is hereby adopted.

(a) The term "reimbursable expense" as used herein shall mean these expenses which are authorized to be reimbursed under the provisions of Sections 36-7-20/22 1984 Cum. Suppl., Code of Alabama 1975)

(b) The term "period of travel" as used herein shall mean the period beginning with the date an employee leaves for travel and ending with the date the employee returns from travel.

(c) The term "expense period" as used herein shall mean the period beginning with the first day and ending with the 15th day of any month or the period beginning with the 16th day and ending with the last day of any month.

(d) Whenever an employee of the Department of Revenue is required pursuant to his employment to travel outside the State of Alabama, the officer of the Department directing such travel shall estimate the reimbursable expense thereof and shall recommend to the Commissioner of Revenue in writing the amount of money to be advanced to such traveler in payment of travel expense not to exceed five hundred dollars (\$500) for any period of travel.

(e) The Commissioner of Revenue, or such other officer of the Department of Revenue as the Commissioner shall designate to act for him, on receipt of a written recommendation of advance payment of travel expense as provided in paragraph (d) hereof, shall in writing approve, amend or disapprove such payment. The amount of advance, if approved as recommended or as amended by the Commissioner, shall include the following statement:

### **STATEMENT**

I, the undersigned, hereby swear (or affirm) that amounts represented on the attached voucher are required by me as prepayment for travel expenses as entitled under Sections 36-7-20/22, 1984 Cum. Suppl., Code of Alabama, 1975.

\_\_\_\_\_  
Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

(f) The request shall be vouchered in accordance with normal rules of voucher procedures. The completed voucher shall be transmitted to the Comptroller for a warrant to be drawn on the order of the traveler on funds set aside in the State Treasury for prepayment of travel expense.

(g) At the close of each expense period, the traveler may submit a claim for reimbursable expense in the customary form.

(h) At the close of each period of travel, the traveler shall submit a final claim for reimbursable expense in the customary form and, within a period of not greater than 10 calendar days after the end of the period of travel, the traveler shall remit to the prepaid travel fund the total amount of such prepayment advanced to him. Such reimbursement shall be made to the designated cashier of the Revenue Department, together with a statement of amount advanced and period of travel. The cashier shall receipt the reimbursement and deposit the same with the State Treasurer to the credit of the prepayment of travel fund.

(i) There shall be established with the Comptroller, the State Treasurer and the Department of Revenue a special fund account for prepayment of travel fund which shall at all times reflect the total amount of advanced travel expense outstanding. Records of the Department of Revenue will also reflect the individual amounts unaccounted for in the hands of travelers. (Adopted October 24, 1967, amended January 5, 1985)

### **810-1-2-.01 Scope.**

These rules apply to the procedures for adopting, amending or repealing rules and regulations by the Department on and after October 1, 1982. These rules apply to rulemaking initiated either by the Department or in response to a petition filed pursuant to §41-22-8 Code of Alabama 1975. (Authority: Section 41-22-2(d), Code of Alabama 1975)

### **810-1-2-.02 Notice of Proposed Rulemaking.**

(1) When the Department initiates a rulemaking action, either on its own initiative or in response to a petition submitted pursuant to § 41-22-8, the Commissioner shall issue a Notice of Proposed Rulemaking. Such Notice shall be signed by the Commissioner or his designee and attested by the Secretary. After approval by the Commissioner and the Secretary, the Notice shall be submitted for publication in the Alabama Administrative Monthly, and distributed as specified by the Alabama Administrative Procedure Act.

(2) The notice shall specify the substance of the proposed rulemaking action, along with the date, time and place of the public hearing on the proposed rulemaking. The date for the public hearing shall be not less than thirty-five (35) days after publication of the notice in the Alabama Administrative Monthly. (Authority: Section 41-22-2(d), Code of Alabama 1975)

### **810-1-2-.03 Public Hearings.**

(1) An oral hearing in connection with a proposed rulemaking action will be scheduled as indicated in the Notice of Proposed Rulemaking. The hearing shall be conducted by the Secretary, or his designee. Such hearing may be held in Montgomery, Alabama, or at such other convenient location as the

Secretary may designate, and shall be recorded by mechanized means or by a qualified shorthand reporter. A summary of the proceedings shall be placed in the record maintained by the Secretary, together with the Secretary's decision and findings in connection with the proposed rulemaking.

(2) All interested persons who desire to make an oral presentation at the hearing shall give notice to the Secretary at least seven (7) days prior to the hearing date, advising the substance of the proposed oral presentation, the estimated time needed for the presentation, and any other information necessary for the orderly scheduling of the hearing. Any person who desires to make an oral presentation at the hearing without having given the notice to the Secretary required by this rule may be allowed to participate in the manner and to the extent determined by the Secretary in his discretion.

(3) The Secretary will establish an agenda for the hearing, and will advise all participants at the beginning of the hearing of the order of presentations and the time allowed to each. The hearing may be continued or adjourned to such time and place as the Secretary deems advisable. (Authority: Section 41-22-5, Code of Alabama 1975)

#### **810-1-2-.04 Written Comments.**

Written comments by any interested person in response to a Notice of Proposed Rulemaking shall be submitted not later than the day scheduled for the public hearing. Such comments must identify the notice of Proposed Rulemaking by subject matter or docket number, and set forth with particularity the desired action requested of the Department. (Authority: Section 41-22-5, Code of Alabama 1975)

#### **810-1-2-.05 Petition For Rulemaking.**

(1) Any interested person may petition the commissioner to institute proposed rulemaking action to amend or repeal existing rules, or to adopt new rules, on any subject matter for which the commissioner has the authority to adopt rules and regulations.

(2) A petition for rulemaking shall be in substantially the following format:

STATE OF ALABAMA  
BEFORE THE DEPARTMENT OF REVENUE

(Name of petitioner) Docket No. \_\_\_\_\_

Petitioner

PETITION FOR RULEMAKING

The undersigned Petitioner hereby requests the Commissioner of Revenue to initiate rulemaking action as set forth herein.

(state substance of rulemaking action requested, such as rule to be repealed, or language to be amended, or new rule to be adopted.)

As grounds for the requested rulemaking, the Petitioner shows unto the commissioner the following:

(state in detail the reasons the requested rulemaking action is needed, the benefits to be derived or improvements to be made by adopting the requested rulemaking.)

DATED this \_\_\_\_\_ day of Name, address and \_\_\_\_\_, 19 \_\_\_\_\_. telephone number of Petitioner.

Name, address and telephone number of Petitioner's counsel, if represented by counsel.

(3) Within sixty (60) days after receipt of the petition, the Commissioner will either deny the petition or issue a Notice of Proposed Rulemaking incorporating the proposed rulemaking as petitioned. If no decision is rendered within (60) days, the petition will be deemed denied. If a notice of denial or a Notice of Proposed Rulemaking, is issued, a copy will be sent to the petitioner (or his counsel, if represented by counsel) by regular first class mail to the address indicated on the petition. (Section 41-22-8, Code of Alabama 1975; Adopted through APA January 12, 1984)

### **810-1-2-.06 Final Adoption of Proposed Rules.**

(1) Not later than fourteen (14) days after conclusion of the hearing on the proposed rules, the Secretary will report to the commissioner the substance of written and oral comments received in connection with the proposed rulemaking, together with his recommendations for retaining, revising or dismissing the proposed rulemaking.

(2) The Commissioner shall issue his final order within fourteen (14) days after receiving the report of the Secretary. The final order shall be distributed as provided in the Alabama Administrative Procedure Act.

(3) The rules, as finally adopted shall become effective on the date specified therein, but not less than thirty-five (35) days after publication in the Alabama Administrative Monthly.

(Section 41-22-5, Code of Alabama 1975; Adopted through APA January 12, 1984)

### **810-1-2-.07 Emergency Rules.**

(1) Whenever the Commissioner deems an emergency condition exists as provided in the Alabama Administrative Procedure Act, or when otherwise provided by statute, court order or in compliance with a federal law or regulation, temporary emergency rules may be adopted, or existing rules may be amended or repealed, without giving the notice provided by Rule 810-1-2-.02, or upon such notice as the Commissioner deems advisable.

(2) The Commissioner shall make a finding of the emergency condition or conditions, and shall place such finding in the record and in the Notice of Rulemaking.

(3) Temporary emergency rules, when signed by the Commissioner or his designee, and attested by the Secretary, shall be effective for a period as specified in the rule, not exceeding one hundred twenty (120) days, and shall be filed and published as specified in the Alabama Administrative Procedure Act.

(Section 41-22-5, Code of Alabama 1975; Adopted through APA January 12, 1984)

### **810-1-5-.01 Timely Mailing Treated As Timely Filing and Paying.**

(1)(a) When any return, claim, statement, or any other document is required to be filed, or any payment is required to be made, within a prescribed time period under any provision of Title 40, Code of Alabama 1975, such return, claim, statement, other document or payment will be considered to be made within the prescribed time if the return, claim, statement, other document or payment is mailed to the proper agency, office or officer, postage prepaid, and the cover or envelope containing such return, claim, statement, other document or payment is postmarked by the United Postal Service on or before the last day of the prescribed time period (including any allowed extension).

(b) If the last day for filing the document or making the payment described in subparagraph (a) above (and for the timely mailing thereof) falls on a date to be excluded as the last day as provided by Section 1-1-4, Code of Alabama 1975, then the last day becomes the next working day. 1. Section 1-1-4 excludes Sunday, holidays defined in Section 1-3-8, Code of Alabama 1975, and any date on which the (state or county) office in which the act must be done is closed.

(i) Generally, Saturdays, Sundays and all state holidays would be excluded from the last day on which the mailing may be timely made, and the next working day allowed.

(ii) A federal holiday, which is not also a state holiday, will not be excluded as the last day, even if the United States Post Office is not open.

(2) Except as provided in paragraph (3) below, the return, claim statement, other document or payment must actually be received by the proper agency, office or officer to qualify as timely filed as provided in paragraph (1) above.

(3)(a) If the return, claim statement, other document or payment is sent by United States registered mail, such registration shall be prima facie evidence that the return, claim, statement, other document or payment was delivered and the date of registration shall be deemed the postmark date.

(b) If the return, claim, statement, other document or payment is sent by United States certified mail, return receipt requested showing to whom and when delivered; and the receipt reflects receipt of the mailing by the proper official, the mailing will be considered as if sent by registered mail as provided in subparagraph (a) above.

(4) Articles delivered by the United States Postal Service which do not bear a postmark affixed by the United States Postal Service will qualify under the provisions of paragraph (1) above if the article bears a postage meter imprint affixed in accordance with applicable regulations promulgated by the United States Postal Service (Part 144, Domestic Mail Manual) indicating the article was mailed within the time permitted by paragraph (1) above.

(5) This rule does not apply to:

(a) the filing of any claims, statements, other documents or the making of any payments to any court.

(b) to the receipt of any currency or other form of payment unless the payment is actually received and accounted for by the proper agency, office or officer.

(c) to any filing or payment required by any provision of Title 40 to be delivered by any method other than mailing.

(d) to any filing or payment required to be made by any provision of law other than Title 40. For example, this rule does not apply to:

1. any filing or payment of motor vehicle licenses or registration pursuant to Title 32.
2. any filing with this Department pursuant to the Alabama Administrative Procedure Act of Title 41.
3. any filing or payment of local taxes administered by this Department pursuant to the provisions of Title 11.
4. any filing or payment with this Department in connection with the Boxing and Wrestling Commission pursuant to Title 41.

5. any filing or payment with this Department pursuant to the Forest Products Severance Tax Law of Title 9.

(e) any return, claim, statement or other document, or any payment delivered by any carrier other than the United States Postal Service, with the exception of the designated

delivery services defined in paragraph (8) below.

(6) This rule does apply to any filing or payment required by Title 40 to be made with any Judge of Probate, License Commissioner, Tax Assessor or Tax Collector of any county in this state. [See paragraph (5)(d)1. above regarding motor vehicle licensing and registration.]

(7) This rule is effective for the filing of any returns, claims, statement, other documents or payments for any tax years or periods which began after December 31, 1984.

(8)(a) Treatment of Private Delivery Services. Any reference in this rule to the United States Postal Service shall be deemed to include a reference to any designated delivery service, as defined by 26 U.S.C. § 7502(f), any U.S. Treasury Department Regulations promulgated thereunder, or any such designated delivery service listed in Internal Revenue Service Revenue Notice 97-26, 1997-1 C.B. 413, or any successor Notice or similar pronouncement by the Internal Revenue Service.

(b) Any reference in this rule to a postmark by the United States Postal Service shall be deemed to include a reference to any date recorded or marked as described in 26 U.S.C. § 7502 (f)(2)(C) or in U.S. Treasury Department Regulations promulgated thereunder.

(Section 40-1-45, Code of Ala. 1975) (Amended April 28, 1988, amended February 9, 2000)

### **810-1-6-.01. Signature Requirements of Tax Returns and Other Documents of All Types Filed by Electronic Methods.**

For the Alabama Department of Revenue to identify a taxpayer who files a tax return or submits other documents by electronic means, the identity of the taxpayer must be established by an electronic identifier (signature). The electronic identifier must be sufficiently unique to provide the Department with reasonable assurances of the correct identity of the taxpayer and must be compatible with the electronic filing systems in use by the Department. The Department shall determine which electronic procedures or methods are to be used in the electronic signature validation process. (Sections 40-2A-7(a)(5) and 40-30-5, Code of Alabama 1975) (Adopted through PA effective June 17, 1999)

### **810-1-6-.02 Scope of the Rules.**

This chapter sets forth the rules to be used by the Alabama Department of Revenue in conjunction with a department-sponsored Internet-based system for the electronic filing and payment of the taxes enumerated in Rule 810-1-6-.05. The Department is authorized to accept tax returns filed in electronic commerce pursuant to Chapter 30 of Title 40 of the Code of Alabama 1975. The electronic payment of taxes filed under this program shall be made in accordance with the rules of the department governing electronic funds transfer found in Chapter 810-13-1. (Sections 40-2A-7(a)(5), 40-30-1, 40-30-2, 40-30-3, 40-30-4, 40-30-5 and 40-30-6, Code of Alabama 1975) (Adopted through APA August 30, 2001, effective October 4, 2001)



**810-1-6-.03 Definitions**

(1) The definitions of terms contained in Code of Alabama 1975, Section 40-30-3, are incorporated into this chapter by reference.

(2) The term Aprogram@ as used in this chapter shall mean the department-sponsored Internet-based system for the electronic filing and payment of the taxes enumerated in Rule 810-1-6-.05. (Sections 40-2A-7(a)(5) 40-30-1, 40-30-2, 40-30-3, 40-30-4, 40-30-5 and 40-30-6, Code of Alabama 1975) (Adopted through APA August 30, 2001, effective October 4, 2001)

**810-1-6-.04 Internet-Based Electronic Filing and Payment of Taxes to be Provided Through Electronic Return Originators.**

The department shall sponsor an Internet-based electronic filing and payment program for the taxes enumerated in Rule 810-1-6-.05. Internet-based electronic filing and payment of taxes may be provided under this program by electronic return originators pursuant to Chapter 30 of Title 40, Code of Alabama 1975, and rules promulgated by the department. Electronic return originators accepted into the program must comply with the requirements of the program as outlined in department rules and in the publications referenced in the department rules. Electronic return originators are limited agents of the department only for the purpose of performing the duties and responsibilities required of electronic return originators as contemplated in Chapter 30 of Title 40, Code of Alabama 1975, and the rules promulgated by the department pertaining to the Internet-based electronic filing and payment program. (Sections 40-2A-7(a)(5), 40-30-1, 40-30-2, 40-30-3, 40-30-4, 40-30-5 and 40-30-6, Code of Alabama 1975) (Adopted through APA August 30, 2001, effective October 4, 2001)

**810-1-6-.05 Tax Types Covered and Requirements for Tax Returns.**

(1) The electronic return originator shall provide the taxpayer with the capability of Internet-based electronic filing and payment of the taxes listed below from the taxpayer=s personal computer. A complete tax return filed via the Internet will consist of data transmitted electronically and shall contain the same information as the corresponding tax return filed entirely on paper.

(2) The tax return information to be provided to the department through Internet-based filing with respect to each tax is the same information outlined in the corresponding rule or other source shown in the column entitled ARule or other Source Containing Form Layout.@

Tax Code	Form Type	Description of Tax Return	Rule or Other Source Containing Form Layout
SS	2100	state sales tax	810-6-4-.19
SE	2105	state sales tax with estimate	810-6-4-.19
SC	9501	state-administered county & municipal sales, use, rental, & lodgings tax	810-6-7-.04

--	----	nonstate-administered county & municipal sales, use, rental, & lodgings	guidelines issued by the Standard Tax Form Committee created pursuant to §11-51-210
SU	2620	state sellers use tax	810-6-5-.19.01
CU	2610	state consumers use tax	810-6-5-.19.01
SR	2410	state rental tax	810-6-5-.09
LN	2310	north Alabama 5% state lodgings tax	810-6-5-.22
LO	2320	state lodgings tax	810-6-5-.22
IW	A-6	state withholding tax monthly return	810-3-74-.01
IW	A-1	state withholding tax quarterly return	810-3-74-.01

(3) Internet-based tax returns for state-administered county & municipal sales, use, rental, and lodgings taxes shall require the following information:

- (a) period covered by the return.
- (b) legal name of taxpayer.
- (c) taxpayer=s complete address.
- (d) taxpayer=s tax account number.
- (e) sales tax information as follows:

1. a breakdown of total gross sales of automotive vehicles, truck trailers, semitrailers, and house trailers; total gross sales of farm machinery and equipment; total gross sales of machines used in mining, quarrying, manufacturing, compounding, or processing tangible personal property; total gross sales of food and food products for human consumption not including beverages other than coffee, milk, milk products, and substitutes therefor sold through vending machines, gross receipts from places of amusement, and gross sales of all other tangible personal property in the local taxing jurisdiction,
2. a breakdown, by applicable tax rate, of the cost of property purchased at wholesale withdrawn for use or consumption,
3. a breakdown, by applicable tax rate, of collections during reporting period on credit sales previously claimed as a deduction,
4. totals, by applicable tax rate, of items (1), (2), and (3),

5. a breakdown, by otherwise applicable tax rates, of total deductions claimed,
6. measure of tax by applicable tax rate,
7. gross tax due by applicable tax rate,
8. number of automotive vehicles withdrawn for use as demonstrators,
9. total demonstrator fee due,
10. total gross amount of tax due,
11. computation of applicable discount due for prompt payment,
12. penalty and interest due, if applicable, and
13. total amount due.

(f) rental tax information as follows:

1. a breakdown of the gross proceeds derived from the leasing or rental of automotive vehicles, truck trailers, semitrailers, and house trailers; the gross proceeds derived from the leasing or rental of linens and garments; and the gross proceeds derived from the leasing or rental of all other tangible personal property,
2. a breakdown, by otherwise applicable tax rates, of total deductions claimed,
3. measure of tax by applicable rate,
4. gross tax due by applicable rate,
5. total gross amount of tax due,
6. penalties and interest due, if applicable, and
7. total amount due.

(g) lodgings tax information as follows:

1. total gross charges, both cash and credit, from the rental of rooms, lodgings, accommodations, and services furnished to transients,

2. total collections on credit charges previously claimed as a deduction,
3. total of items (1) and (2),
4. total deductions,
5. total amount remaining as a measure of tax,
6. gross amount of tax,
7. discount for prompt payment of tax,
8. penalties and interest due, if applicable, and
9. total amount due.

(h) sellers use tax information as follows:

1. a breakdown of the total sales price of automotive vehicles, truck trailers, semitrailers, and house trailers; the total sales price of farm machinery and equipment; the total sales price of machines used in mining, quarrying, manufacturing, compounding, or processing tangible personal property; and the total sales price of all other tangible personal property sold for delivery in the local taxing jurisdiction,
2. a breakdown, by applicable tax rate, of collections on credit sales previously claimed as a deduction,
3. totals, by applicable tax rate, of items (1) and (2),
4. a breakdown, by otherwise applicable tax rates, of total deductions claimed,
5. measure of tax by applicable tax rate,
6. gross tax due by applicable tax rate,

7. total gross amount of tax due,
8. computation of applicable discount due for prompt payment,
9. penalties and interest due, if applicable, and
10. total amount due.

(i) consumers use tax information as follows:

1. a breakdown of the total purchase price of automotive vehicles, truck trailers, semitrailers, and house trailers not registered with the county probate judge; the total purchase price of farm machinery and equipment; the total purchase price of machines used in mining, quarrying, manufacturing, compounding, or processing tangible personal property; and the total purchase price of all other tangible personal property purchased outside the local taxing jurisdiction for use, storage, or consumption in the jurisdiction,
2. total purchases, by applicable tax rate,
3. a breakdown, by otherwise applicable tax rates, of total deductions claimed,
4. measure of tax by applicable tax rate,

5. gross tax due by applicable tax rate,
6. total gross amount of tax due,
7. credit for taxes paid to another state or to a political subdivision of another state on out-of-state purchases,
8. penalties and interest due, if applicable, and
9. total amount due.

(Authority: Sections 40-2A-7(a)(5), 40-30-1, 40-30-2, 40-30-3, 40-30-4, 40-30-5 and 40-30-6, Code of Alabama 1975) (Adopted through APA August 30, 2001, effective October 4, 2001)

#### **810-1-6-.13 Requirements for Third-Party Bulk Filers.**

- (1) The term “third-party bulk filer”, as used in this rule, means a person who is authorized to file and pay the taxes enumerated in Rule 810-1-6-.05 on behalf of multiple taxpayers. Such term, however, shall not include any person that provides payroll tax filing and payment services to one or more employers if the person has the contractual authority to access the employer's funds for the purpose of making payroll tax payments to the Department on behalf of the employer.
- (2) A person shall not act as a third-party bulk filer unless the person is registered with the Department.
- (3) A person may apply to the Department, on a form prescribed by the Department, for registration as a third-party bulk filer under this rule, and the Department will approve the application if the properly completed application indicates that the person will comply with this rule. However, approval of the application does not grant the third-party bulk filer authority to act as an agent of the Department.
- (4) Persons approved as third-party bulk filers are required to:
  - (a) Submit returns and payments for those taxes required to be filed electronically, in a timely manner over the Internet using the Alabama Paperless Filing System for taxpayers having a valid account with the Department.

- (b) Submit a separate electronic payment for each return, account, or filing period.
- (c) Permit the Department to conduct scheduled or unscheduled audits of the third-party bulk filer's books and records relating to compliance with this rule.
- (d) Provide the Department with a copy of any client contract upon request. At the time the request is made, the Department will also request a copy of a valid power of attorney allowing the third-party to file returns and/or pay Alabama taxes on behalf of the client. The power of attorney must also indicate the authorization for the third-party to receive information about filings or payments directly from the Department.
- (e) Electronically provide the Department, on a monthly basis, an updated client list containing at least the name, current mailing address, account number, and telephone number for those clients for whom they are authorized to file. The mailing address listed for the client must be the client's actual street or post office box address and not the third-party bulk filer's address.
  - 1. Initial client list must show all clients.
  - 2. Subsequent updates should show only additions and deletions.
- (5) Third-party bulk filers are prohibited from including any information in marketing materials, sales materials, or advertisements that could reasonably be understood to mean that the Department endorses or approves any third-party bulk filer.
- (6) If the Department determines that continued operation of the third-party bulk filer would present a risk of loss to its clients, the Department may revoke the registration of the third-party bulk filer and notify the clients of the revocation.
- (7) If the Department determines that the third-party bulk filer is not in compliance with this rule or other Department rules applicable to taxes enumerated in Rule 810-1-6-.05, the Department may revoke the third-party bulk filer's registration. (Authority: Sections 40-2A-7(a)(5), 40-2A-7(a)(1), 40-23-31, 40-23-83, 40-23-111, 40-30-2, Code of Alabama 1975 (History: New rule: Filed August 31, 2004, effective October 5, 2004))

# Financial Operations

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## **810-13-1-.01. Scope of the Rules.**

This chapter sets forth the rules to be used by the Alabama Department of Revenue in the administration of Act No. 91-570, passed during the 1991 regular legislative session. Act No. 91-570 authorizes the Department of Revenue to require certain taxpayers to make tax payments in a prescribed manner involving the electronic transfer of funds so that the funds will be immediately available to the State Treasury on the due date of payment. If there is a conflict between these rules and any other rules applicable to taxes, these rules shall govern. (Act No. 91-570) (Adopted through APA effective January 10, 1992)

## **810-13-1-.02. Definitions.**

Definitions. For the purposes of this chapter, the terms and phrases used in these rules shall have the meanings prescribed in this section, unless a different meaning is clearly indicated by the context in which the term or phrase is used.

(1) "ACH" or "Automated Clearing House" means a regional facility which performs inter-member (financial institutions) clearing of paperless entries between such institutions. ACHs are generally operated by the Federal Reserve, but can be operated privately, and use rules, procedures, and programs developed on a local basis by their participating financial institutions under the general direction of the National Automated Clearing House Association (NACHA). ACHs are distribution and settlement points for the electronic clearing of debits and credits between financial institutions, rather than the physical movement of paper items.

(2) "ACH Credit" means the electronic funds transfer payment method where transactions are initiated and generated by the taxpayer, cleared through the ACH system for deposit to the State Treasury.

(3) "ACH Debit" means the electronic funds transfer payment method where transactions are generated by the Department upon the taxpayer's instruction and cleared through the ACH system for deposit to the State Treasury.

(4) "ACH Trace Number" means the unique number assigned to an electronic payment transaction by the financial institution originating the transaction.

(5) "Addenda record" means that information required by the Department in an ACH Credit transaction or Fedwire transfer which identifies the taxpayer, the tax type, the period covered, and the payment amount. See the definition for TXP Banking Convention.



- (6) "Calendar year" means a twelve month period starting with the first day of January and ending with the last day of December.
- (7) "Call-in day" means the day on which a taxpayer communicates payment information to the Data Collection Center.
- (8) "Call-in period" means the specified time interval in each call-in day during which EFT payment information received by the Data Collection Center is processed for transactions occurring on the next business day. Payment information must be communicated to the Data Collection Center prior to 3:45 p.m. (Central Standard Time) on the call-in day to clear the ACH for deposit in the State Treasury on the next business day.
- (9) "Collected funds" means those amounts deposited in the bank which have been presented for payment and for which payment has actually been received, those funds which have completed the electronic funds transfer process and are available for immediate use by the State Treasurer. See Immediately Available Funds. (Act No. 91-570) (Adopted through APA effective January 10, 1992)

### **810-13-1-.03. General Requirements.**

(1) Under the authority granted to the Department by Act No. 91-570 Alabama 1991 Regular Session, the Department establishes a requirement, that every taxpayer owing the Department, in connection with an individual transaction consisting of any State of Alabama return, fee, report or other document, or any other indebtedness to the Department, an amount of money as specified in this rule, shall pay such tax liability, fee, or obligation to the Department, in accordance with the procedures stated in these rules, no later than the date such payment is required by law, in funds which are immediately available to the State Treasury on the due date of payment.

(a) The determination as to which taxpayers shall be subject to the remittance provisions of these rules is made by the Department, on a tax type-by-tax type basis, and is based on individual payments made to the Department during a calendar year, rather than the aggregate of payments made during a calendar year. Threshold amounts have been established to determine if payments made by a taxpayer subject the taxpayer to the EFT tax payment requirement of these rules.

(b) The threshold amount for calendar year 1992 is \$100,000. Taxpayers making individual payments of \$100,000 or more will comply with the procedures stated in these rules for payments made during the calendar year 1992 and all years thereafter.

(c) The threshold amount for calendar year 1993 is \$50,000. Taxpayers making individual payments of \$50,000 or more will comply with the procedures stated in these rules for payments made during the calendar year 1993 and all years thereafter.

(d) The threshold amount for calendar year 1994, and years thereafter, is 25,000. Taxpayers making individual payments of \$25,000 or more will comply with the procedures stated in these rules for payments made during the calendar year 1994 and all years thereafter.

(e) When taxpayers are selected by the Department to make EFT payments for a tax type in accordance with these rules, the taxpayers will be required to comply with these rules until released from that obligation by the Department.

(2) The Department will make an annual determination of those taxpayers who will be required to make payments in accordance with these rules. The determination will be made on a tax type-by-tax type basis; the taxpayer may be liable to make payments for one tax type in accordance with the procedures stated in these rules, but may not be liable to make payments for another tax type in accordance with the procedures stated in these rules. The Department will also review payments on an interim basis to identify additional taxpayers who will be required to make payments in accordance with the procedures stated in these rules.

(a) The Department will notify the selected taxpayers of the requirements of these rules at their last address of record.

(b) The Department will provide the selected taxpayers with forms necessary for registering to make payments for the taxes through EFT. The Department will provide an explanation of the payment options available to the taxpayer.

(c) The taxpayer shall register to make payments for the taxes through EFT, and shall select a payment option.

(d) The Department will provide the selected taxpayers with instructions and procedures for paying the taxes through EFT.

(e) The Department will provide technical assistance and guidance to the selected taxpayers concerning the payment of taxes through EFT. An EFT hotline will be available to the taxpayers from 8:00 a.m. through 5:00 p.m. (Central Standard Time) each business day, with the exception of state holidays. (Act No.91-570) (Adopted through APA effective January 10, 1992)

#### **810-13-1-.04. Tax Types Covered.**

(1) Payments for the following tax types will be subject to the EFT tax payment requirements of these rules:

(a) Cellular Telecommunication Services Tax (b) Coal Severance Tax (State and local)  
(c) Contractor's Gross Receipts Tax (d) Corporation Franchise Tax and Permit Fee  
(e) Corporate Income Tax (f) Financial Institutions Excise Tax (g) Forest Products Severance Tax (State and local) (h) Freight Line Equipment Companies' Tax (i) Gasoline Tax (State and

local) (j) Gasoline Tax (Aviation) (k) Hazardous Waste Fee (l) Hydro-Electric KWH Tax (m) Income Tax Withholding Payments (n) International Registration Plan Annual Renewal Fees (o) Lodgings Tax (State and local) (p) Lubricating Oils Tax (q) Medicaid Health Care Taxes (r) Motor Carrier Fuel Tax (s) Motor Carrier Mileage Tax (t) Motor Fuels (Diesel) Tax (State and local) (u) Oil and Gas Privilege Tax (v) Oil and Gas Production Tax (w) Oil and Gas Severance Taxes (Local) (x) Pari-Mutuel Pool Tax (y) Playing Cards Tax (z) Registration of Securities (aa) Rental or Leasing of Personal Property Tax (bb) Sales Tax (State and local) (cc) Telegraph Gross Receipts Tax (dd) Telephone Gross Receipts Tax (ee) Tobacco Tax (State and local) (ff) T.V.A. Electric Payments (gg) Use Tax (State and local) (hh) Utility Excise Tax (ii) Utility Gross Receipts Tax (jj) Utility License Tax (2.2%) (kk) Wholesale Oil License Payments

(2) The above referenced list of tax types is not meant to be exclusive and the Department may at a later date implement EFT tax payment requirements for other types of tax. (Act No.91-570) (Adopted through APA effective January 10, 1992)

### **810-13-1-.05. Selection of Taxpayers.**

(1) On an annual basis, the Department will review the most recent twelve-month period of payment history for a taxpayer, on a tax type-by-tax type basis, to determine if the payment history requires the taxpayer to make payments through EFT. If the taxpayer was not previously required to make payments for the tax type using EFT, a determination will be made as to whether the taxpayer should be required to make payments for the tax type using EFT. If the taxpayer was previously required to make payments for the tax type using EFT, a determination will be made as to whether the taxpayer should continue to be required to make payments for the tax type using EFT.

(2) On an interim basis, the Department will review payment transactions, on a tax type-by-tax type basis, to identify those transactions which equal or exceed the threshold amount. Taxpayers who previously were not selected as being required to make payments for a tax type using EFT and who make payments in amounts equal to or in excess of the threshold amount will be selected to be required to use EFT for the tax type.

(3) Each payment under this rule shall be limited to a single tax type, except when two or more tax types are permitted to be paid on a single return, as in the case of franchise tax. Whenever two or more tax types are permitted to be paid on a single return, the amount will be considered a single payment.

(4) Each payment under this rule shall be limited to the total of payments made for a single reporting period for a tax type. Some examples of this are; the payment(s) made for a tax type which is required to be paid on a monthly basis, the payment(s) made for a tax type which is required to be paid on a quarterly basis, the payment(s) made for a tax type which is required to be paid on an annual basis, the payment(s) made with an extension request for a tax type. (Act No.91-570) (Adopted through APA effective January 10, 1992)

**810-13-1-.06. Notification of Taxpayers.****(1) Annual Selection of Taxpayers Required to Use EFT.**

(a) At least 90 days prior to the date of the first required payment, the department will mail a written notice to all taxpayers selected in the annual review of transactions informing them that they are required to make payments for a tax type using EFT. The notice will be mailed to the last address of record for the taxpayer. The Department will provide the taxpayer with an explanation of Act No. 91-570; will identify the tax types to be paid using EFT; will provide an explanation of the payment alternatives available to the taxpayer; and will provide the taxpayer with Form EFT 001, Electronic Funds Transfer Authorization Agreement.

(b) Within 30 days the taxpayer will be required to return a properly and fully completed Form EFT 001 to the Department for each tax type the taxpayer was selected to pay using EFT. The taxpayer will use the form to make an election as to which payment method the taxpayer will use, or will provide a written statement explaining the reason the taxpayer should be exempted from the requirement to make payments for a tax type using EFT. A taxpayer who elects to use the ACH Credit payment method in lieu of the ACH Debit payment method must file a written request with Form EFT 001 to use the ACH Credit method. The request must state the reason for requesting the ACH Credit payment method.

(c) Based on the payment method elected by the taxpayer, detailed instructions explaining the payment procedures will be provided to the taxpayer within 30 days.

(d) If the Department receives no response from the taxpayer within 30 days, the Department will provide the taxpayer with a second notice, utilizing certified mail. No response on the part of the taxpayer will subject the taxpayer to all applicable penalties, interest and loss of applicable discount, upon the taxpayer making a payment equal to or in excess of the threshold amount for that period.

(e) Upon a showing by the taxpayer to the satisfaction of the Department that the taxpayer will not be making payments for a tax type equal to or in excess of the threshold amount for the period, the department shall waive the requirement to make payments for the tax type by EFT. If the taxpayer subsequently makes a non-EFT payment, in an amount equal to or in excess of the threshold amount for the period the taxpayer was previously selected to make payments using EFT, for the tax type for which the taxpayer was previously selected to make payments using EFT, the taxpayer may be subject to all applicable penalties, interest, and loss of discounts.

**(2) Interim Selection of Taxpayers Required to Use EFT.**

(a) Where the taxpayer was not previously selected as being required to make

payments for a tax type using EFT, and the interim selection process identifies the taxpayer as having made a payment in an amount which equals or exceeds the threshold amount, the Department will mail a written notice to the taxpayer informing the taxpayer that he is required to make payments for a tax type using EFT. The notice will be mailed to the last address of record for the taxpayer. The Department will provide the taxpayer with an explanation of Act No. 91-570, will identify the tax types to be paid using EFT, will provide an explanation of the payment alternatives available to the taxpayer, and will provide the taxpayer with Form EFT 001, Electronic Funds Transfer Authorization Agreement.

(b) Within 30 days the taxpayer will be required to return a properly and fully completed Form EFT 001 to the Department for each tax type the taxpayer was selected to pay using EFT. The taxpayer will use the form to make an election as to which payment method the taxpayer will use, or will provide a written statement explaining the reason the taxpayer should be exempted from the requirement to make payments for a tax type using EFT. A taxpayer who elects to use the ACH Credit payment method in lieu of the ACH Debit payment method must submit a written request with Form EFT 001 to use the ACH Credit method. The request must state the business reason for requesting the ACH Credit payment method.

(c) Based on the payment method elected by the taxpayer, detailed instructions explaining the payment procedures will be provided to the taxpayer within 30 days.

(d) If the Department receives no response from the taxpayer within 30 days, the Department will provide the taxpayer with a second notice, utilizing certified mail. No response on the part of the taxpayer will subject the taxpayer to all applicable penalties, interest and loss of applicable discount, upon the taxpayer making a payment for the tax type equal to or in excess of the threshold amount for that period.

(e) Upon a showing by the taxpayer to the satisfaction of the Department that the taxpayer will not be making payments for a tax type equal to or in excess of the threshold amount for the period, the department shall waive the requirement to make payments for the tax type by EFT. If the taxpayer subsequently makes a non-EFT payment, in an amount equal to or in excess of the threshold amount for the period the taxpayer was previously selected to make payments using EFT, for the tax type for which the taxpayer was previously selected to make payments using EFT, the taxpayer may be subject to all applicable penalties, interest, and loss of discounts. (Act No.91-570) (Adopted through APA effective January 10, 1992)

#### **810-13-1-.07. Registration of Taxpayers.**

(1) The taxpayer shall properly and fully complete Form EFT 001, Electronic Funds Transfer Authorization Agreement, provided by the Department, and return the form to the Department by the date specified by the Department. Pertinent taxpayer information provided with Form EFT 001, Electronic Funds Transfer Authorization Agreement will be recorded by the Department and provided to the Data Collection Center. The information required to be provided with Form EFT 001 includes:

(a) Taxpayer name; (b) Taxpayer address; (c) Tax Type; (d) Tax code/account number; (e) Contact person-name and title (f) Contact person-address (g) Contact person-telephone number (h) Contact person-fax number (i) Bank name; (j) Bank address; (k) Bank transit/routing number ; (l) Bank account number; (m) Signature of person authorized to sign checks; (n) Written Verification from the taxpayer's bank confirming the bank routing and transit number and the bank account number of the taxpayer; and

(o) Other information as is deemed necessary by the Department to administer Act number 91-570.

(2) Upon receipt of taxpayer information from the Department, the Data Collection Center shall assign a confidential taxpayer identification number to the taxpayer which will be used by the taxpayer to communicate payment information to the Data Collection Center. The identification number shall be provided to the taxpayer at least 30 days prior to the date the first required payment is due under the EFT program.

(3) A taxpayer must provide at least a 30 day written notice of any change of information required by Form EFT 001, Electronic Funds Transfer Authorization Agreement, by submitting a revised Form EFT 001 to the Department.

(4) The Department prescribes Form EFT 001, Electronic Funds Transfer Authorization Agreement, dated August, 1991, as the form to be used for the purposes of this chapter and hereby incorporates this form by reference. Copies of this form may be obtained without cost by written request to the Alabama Department of Revenue, EFT Unit, P.O. Box 327950, Montgomery, Alabama 36132-7950.

(5) The Data Collection Center and its employees shall be bound by the same confidentiality requirements as the Department under the Code of Alabama 1975, as amended. (Act No.91-570) (Adopted through APA effective January 10, 1992)

### **810-13-1-.08. Payment Alternatives.**

(1) The ACH Debit payment method will be the primary method used by taxpayers to make payments for a tax type using EFT. The ACH Credit method is a payment method available only to taxpayers with permission of the Department.

(2) The Department will grant taxpayers permission to use the ACH Credit method on a case-by-case basis. A taxpayer who requests permission to use the ACH Credit method must submit a written request to the Department, which demonstrates the existence of a valid business operational reason for using the ACH Credit payment method in lieu of the ACH Debit payment method. A taxpayer who is already using the ACH Credit method to pay vendors, and is already successfully using the ACH Credit method to pay taxes for other jurisdictions is deemed to have a valid business reason for using the ACH Credit method to make payments for Alabama taxes.

(3) The written request to use the ACH Credit method shall be filed with the Alabama Department of

Revenue, EFT Unit, Post Office Box 327950, Montgomery, Alabama 36132-7950. The Department will accept facsimile transmissions of requests. Taxpayers will be promptly notified of the Department's decision.

(4) The Department reserves the right to revoke the ACH Credit method payment privilege of any taxpayer for the following reasons:

- (a) Failure to consistently transmit error-free payments;
- (b) Substantial variation from the requirements and specifications of these rules;
- (c) Failure to make timely EFT payments or to provide timely payment information; or,
- (d) Failure to provide the addenda record, required by these rules, with the EFT payment.

(5) Fedwire is not an EFT payment method alternative available to taxpayers. Fedwire is used only on an emergency basis with prior authorization by the Department. (Act No.91-570) (Adopted through APA effective January 10, 1992)

#### **810-13-1-.09. Payment Procedures - General Provisions.**

(1) Taxpayers who are required to make payments for tax types using EFT must initiate the transaction so that the amount due is deposited as immediately available funds (collected funds) to the State of Alabama's bank account on or before the due date under the applicable revenue law. If a tax payment due date falls on a Saturday, a Sunday, an Alabama ACH Association holiday or an Alabama legal bank holiday as defined in rule number 810-13-1-20, Legal Holidays, the payment by EFT is required so that the funds are immediately available in the State Treasurer's account on the first business day thereafter. If the date on which the taxpayer is required to initiate either an ACH Debit or an ACH Credit transaction falls on a Saturday, Sunday, or a business or banking holiday, the taxpayer must initiate the transaction on the preceding business day.

(2) The requirement to make a payment to the Department using EFT does not change any current filing requirements for tax returns. If the EFT payment is not timely made or the tax return required is not filed by the due date, the provisions for late payment penalties, late filing penalties, interest, and loss of applicable discount shall apply under the provisions of the appropriate revenue laws of the Code of Alabama 1975, as amended, except as provided in these rules.

(3) Any taxpayer required by the Department to use EFT to make payments for a tax type may apply to the Department to be relieved of such requirement if it appears that such taxpayer no longer meets the criteria for mandatory EFT payments. If the taxpayer subsequently makes a non-EFT payment, in an amount equal to or in excess of the threshold amount for the period the taxpayer was previously selected to make payments using EFT, for the tax type for which the taxpayer was previously selected

to make payments using EFT, the taxpayer may be subject to all applicable penalties, interest, and loss of discounts.

(4) Taxpayers may voluntarily elect to make payments for a tax type using EFT. Any taxpayer making a voluntary election to make payments for a tax type by one of the methods set out in these rules may apply to the Department to be relieved of such requirement if such taxpayer no longer desires to make payment by one of said methods. A taxpayer may not make more than one (1) such application per calendar year. Any taxpayer making such an application shall continue to make payment by the payment method elected, in accordance with the procedures stated in these rules, until such time as it is finally determined that the taxpayer should be permitted to make tax payments by other than one of said methods. See Voluntary Use of EFT.

(5) If the taxpayer elects to use the ACH Debit payment method, the taxpayer will furnish the Department with the information needed to complete the transaction. The Data Collection Center will assign confidential identification codes to the taxpayer and all transactions must be initiated by the taxpayer. The taxpayer is responsible for initiating the transaction by calling the Data Collection Center.

(6) If the taxpayer elects to use the ACH Credit payment method, the taxpayer is responsible for ensuring that the bank originating the transaction has the information necessary for timely completion of the transaction. Further the taxpayer is responsible for the correct completion of the transaction. The taxpayer shall provide the information necessary for the bank to complete the NACHA CCD+ entry with the required TXP Banking Convention addenda record. (Act No.91-570) (Adopted through APA effective January 10, 1992)

#### **810-13-1-.10. Procedures for Payment - ACH Debit Payment Method.**

(1) Taxpayers who elect to use the ACH Debit payment method in making EFT payments for tax types shall use the following procedures in communicating payment information, including zero payments, to the Data Collection Center.

(2) Prior to contacting the Data Collection Center the taxpayer will complete a worksheet provided by the Department. The taxpayer will record the following information on the worksheet:

- Tax payment amount -Tax period covered -Tax type
- Payment type

The taxpayer will then compute the verification code on the worksheet. See definition for verification code.

(3) The taxpayer must report payment information to the Data Collection Center no later than 3:45 p.m. (Central Standard Time) on the business day before the due date of the payment. The Data Collection Center must be called, using the specified toll-free number, during the call-in period specified in the detailed instructions provided to taxpayers who have elected the ACH Debit payment



method for EFT payments. The Department will bear the costs of processing EFT payments through the Data Collection Center. Communication by the taxpayer during the call-in period is mandatory to assure the timely posting of the taxpayer's payment on the following business day.

(4) The Data Collection Center will receive the information provided by the taxpayer and will compute the verification code. If the exchange of information is correct, the verification code computed by the Data Collection Center will be identical to the verification code computed by the taxpayer.

(5) If the verification code computed by the Data Collection Center is identical to the verification code computed by the taxpayer, the Data Collection Center will confirm this to the taxpayer. The taxpayer will retain the worksheet and will record the date and time of the call as an audit trail of the payment.

(6) If the verification code is not identical, the Data Collection Center will ask the taxpayer to provide the information again, until it can be verified that the exchange of information is correct.

(7) Successful completion of the call to the Data Collection Center will fulfill the taxpayer's obligation for initiating an ACH Debit transaction.

(8) The payment of taxes through EFT does not relieve the taxpayer from filing the appropriate tax returns or applicable information returns required by the Department. Taxpayers must complete any EFT payment indicators on the form. If an EFT payment indicator is not available, taxpayers must boldly and legibly indicate on the face of the return that payment was made using EFT. The required returns are filed in the normal manner, except that they will be mailed to the following address:

Alabama Department of Revenue  
EFT Unit  
P O Box 327950  
Montgomery, AL 36132-7950

(Act No.91-570) (Adopted through APA effective January 10, 1992)

### **810-13-1-.11. Procedures for Payment - ACH Credit Payment Method.**

(1) The Department will allow certain taxpayers to use the ACH Credit payment method.

(2) It is the intent of the Department to examine each taxpayer's compliance with the requirements of this rule. If a taxpayer has elected the ACH Credit payment method but repeatedly fails to correctly complete the payment transactions in accordance with the procedures stated in these rules, the Department may in its discretion require the taxpayer to make future payments by the ACH Debit payment method.

(3) To assure the timely receipt of payment for a tax type, a taxpayer must ensure that the financial institution originating the transaction does so in sufficient time for the payment to be deposited as immediately available funds (collected funds) to the State Treasury on or before the appropriate due

date of the payment.

(4) All ACH Credit transactions must utilize the NACHA CCD+ entry with a TXP Banking Convention addenda record. The TXP Banking Convention addenda record requires the following information:

- a. Taxpayer's identification number;
- b. Tax type code;
- c. Tax period end date;
- d. Payment type;
- e. Amount of payment;

(5) If the taxpayer repeatedly fails to provide the Department with the required addenda record which conforms to the requirements of the Department, the taxpayer may be required to use the ACH Debit method.

(6) A taxpayer who elects to use the ACH Credit payment method will first determine the total amount of tax due with respect to the tax type for which the payment is being made. At a time arranged between the taxpayer and the taxpayer's financial institution, the taxpayer will provide the taxpayer's financial institution with the information necessary to initiate a timely ACH Credit transaction utilizing the NACHA CCD+ entry and the TXP Banking Convention. A timely ACH Credit transaction will be initiated and posted as immediately available funds (collected funds) to the State of Alabama's bank account on or before the due date of the payment.

(7) Taxpayers electing to use the ACH Credit payment method are responsible for coordinating with their financial institutions to ensure that ACH Credit payments are timely initiated. The impact of prescribed ACH time frames and nightly cycles as well as the impact of weekends and holidays must be considered.

(8) Taxpayers with a zero tax liability for a reporting period must report that information in accordance with the procedures stated in these rules with the exception that a prenote transaction code will be used in the entry detail record.

(9) Taxpayers must file the required return(s.) Any EFT payment indicators on the form must be completed. If an EFT indicator is not available, taxpayers must boldly and legibly print on the face of the return that payment was made using EFT. Tax returns for which payment was made using EFT must be mailed to the following address:

Alabama Department of Revenue  
EFT Unit  
P O Box 327950  
Montgomery, AL 36132-7950

(Act No.91-570) (Adopted through APA effective January 10, 1992)

#### **810-13-1-.12. Requirement for Filing Returns.**

(1) The requirement to use EFT to make tax payments does not change any current filing requirements for tax returns. If the EFT payment is not timely made or the tax return required is not filed by the due date, the provisions for late payment penalties, late filing penalties, interest, and loss of applicable discount shall apply under the provisions of the appropriate revenue laws of the Code of Alabama 1975, as amended, unless otherwise provided in these rules.

(2) Most return forms will have an EFT payment indicator for the taxpayer to complete. In the absence of an EFT payment indicator, taxpayers must boldly and legibly print on the face of the return that payment was made using EFT.

(3) The filed return and the EFT payment shall be coordinated by the Department.

(4) Tax returns for which payment was made using EFT must be mailed to the following address:

Alabama Department of Revenue  
EFT Unit  
P O Box 327950  
Montgomery, AL 36132-7950

(Act No.91-570) (Adopted through APA effective January 10, 1992)

### **810-13-1-.13. Penalties for Noncompliance.**

(1) The provisions of Code of Alabama 1975, as amended, shall govern the administration of any tax, interest, or penalty assessed due to late EFT payments, except as provided in these rules.

(2) No specific additional penalty provisions are provided concerning compliance with the EFT tax payment requirement. Rather, the general provisions for all taxpayers apply. To avoid the imposition of penalties, timely filing of the tax return along with timely payment in accordance with the provisions of Code of Alabama 1975, as amended, and the provisions of these rules is required.

(3) Failure of a taxpayer to respond to the notification from the Department concerning the required use of EFT to make payments for a tax type or failure to timely or properly make EFT payments in accordance with these rules shall subject the taxpayer to applicable penalty, interest, and loss of discount, as provided by the Code of Alabama 1975, as amended, for delinquent or deficient tax payments. If payment is made for a tax type for which a taxpayer was selected to make payments using EFT, and the payment is made in a method which is not in accordance with the procedures stated in these rules, a delinquent payment penalty for that tax type as specified in the Code of Alabama 1975, as amended, may be assessed. In addition to any penalty which may be imposed, interest shall be added to the amount of tax due from the due date of the tax payment to the date that the funds become available to the State Treasury. It is presumed, in the absence of evidence to the contrary, that said funds will be available on the third business day following receipt of payment.

- (4) Penalties may be waived when the circumstances causing delinquency are beyond the control of the taxpayer. Errors made by the Data Collection Center, the State Treasury or the Department which result in a late payment by the taxpayer shall not subject the taxpayer to late payment penalties, interest, or loss of applicable discount for the late payment.
- (5) When a taxpayer uses the ACH Debit payment method, the State of Alabama's bank is the originating bank and is responsible for the accuracy of the transmission. If the taxpayer timely initiated the ACH Debit transaction, received a verification number, and can show adequate funds were available in the bank account, no penalties shall apply with respect to the payment if the transaction was not properly completed.
- (6) When a taxpayer uses the ACH Credit payment method, the taxpayer's bank is the originating bank and the taxpayer is primarily responsible for the accuracy and proper completion of the transaction. The taxpayer must show timely initiation of the transaction, must have provided the correct information for the NACHA CCD+ entry and the required TXP Banking Convention addenda record, must show that there were sufficient funds in the account, and must show that the financial institution properly completed the transaction in a timely manner in order to prove timely compliance. If the taxpayer can make this showing, then no penalties shall apply with respect to the payment if the transaction was not properly completed.
- (7) A taxpayer who is required to make EFT payments and who is unable to make a timely payment because of system failures within the Automated Clearing House System, which are beyond the taxpayer's control, shall not be subject to penalty or interest for late payment or loss of applicable discount. (Act No.91-570) (Adopted through APA effective January 10, 1992)

#### **810-13-1-.14. Voluntary Use of EFT to Pay Taxes.**

- (1) Those taxpayers who are required to make EFT payments for a tax type may request permission to also make EFT payments for other tax types. Those taxpayers who are not required to make EFT payments for any tax type may request permission from the Department to make EFT payments for a tax type.
- (2) Taxpayers making a voluntary election to make EFT payments for a tax type are subject to the provisions of these rules as are those taxpayers who are required to make EFT payments.
- (3) Written applications for voluntary participation in the EFT program must be filed with the Department at least 60 days prior to the due date of the payment(s) in question. Taxpayers may terminate voluntary participation by filing a written application for termination with the Department at least 60 days prior to the due date of the last EFT payment. A taxpayer may not make more than one (1) such application per calendar year.
- (4) Requests for voluntary inclusion and termination notices must be directed to the Alabama Department of Revenue, EFT Unit, P.O. Box 327950, Montgomery, Alabama 36132-7950. (Act No.91-

570) (Adopted through APA effective January 10, 1992)

**810-13-1-.15. Proof of Payment.**

(1) The Department will credit the taxpayer with the amount paid as of the date the payment is received by the State of Alabama's bank account. The proof of payment by the taxpayer shall depend on the payment method utilized.

(2) An ACH Debit transaction may be proven by use of the verification code, received from the Data Collection Center when the transaction was initiated, along with bank statements or other evidence from the bank that the transaction was settled.

(3) Since an ACH Credit transaction is initiated by the taxpayer, the taxpayer has responsibility for the proper and timely completion of the transaction. The taxpayer generally will be given an ACH trace number by the bank originating the transaction. This trace number along with proof of the NACHA CCD + entry showing the State of Alabama's bank routing and transit number and bank account number, plus additional evidence, such as bank statements, that the transaction has been settled, will constitute proof of payment. (Act No.91-570) (Adopted through APA effective January 10, 1992)

**810-13-1-.16. Correction of Errors.**

(1) Errors in the EFT payment process will result in either an underpayment or an overpayment of the tax. In either case, the taxpayer must promptly contact the Department to arrange for appropriate action. Overpayments may be used as a credit against a future tax liability or the taxpayer may apply for a refund. Underpayments should be corrected by the taxpayer immediately to mitigate any penalties.

(2) Errors made in initiating an ACH Debit payment can usually be corrected during the call-in period on the same day the transaction was initiated by the taxpayer. This is addressed in the instructions provided to taxpayers electing to use the ACH Debit payment method.

(3) If a taxpayer does not make a correct payment of tax for a particular period, such taxpayer shall, on the nearest business day to the date on which the error is discovered, contact the EFT Unit for specific instructions.

(4) If the taxpayer error involves an overpayment of tax, the taxpayer may either elect to have the overpayment applied against the liability for the next reporting period or may apply for a refund under the provisions of the applicable tax statute. The Department will make every effort to expedite a refund requested by the taxpayer to correct an EFT payment error.

(5) If the taxpayer error involves an underpayment of tax, the taxpayer must contact the EFT Unit to

make appropriate arrangements to initiate payment for the amount of the underpayment. See Emergency Payments.

(6) In the event a taxpayer using the ACH Debit method communicates payment information to the Data Collection Center after 3:45 p.m. CST (Central Standard Time) on the business day before the due date, the payment shall be posted to the taxpayer's account on the next business day following the due date and shall constitute late payment.

(7) Except as provided in these rules, failure of a taxpayer to make a timely EFT payment because of circumstances under the taxpayer's control, including but not limited to insufficiency of funds in the taxpayer's account or a direct payment to the Department using an unauthorized payment method may result in penalty, interest, and loss of applicable discount. (Act No.91-570) (Adopted through APA effective January 10, 1992)

### **810-13-1-.17. Emergency Payments.**

(1) In the event the taxpayer determines that he is unable to effect a timely EFT payment, for extenuating circumstance beyond the control of the taxpayer, the Department may allow the taxpayer to use Fedwire. For instance, if on the due date of an EFT payment the taxpayer becomes aware that an error was made on the EFT payment which cannot be corrected on that day, the taxpayer may contact the Department and request authorization to correct the payment with a Fedwire. At the discretion of the Department, authorization to use Fedwire for that one payment may be granted. The Department will base its determination upon the taxpayer's payment history as well as the taxpayer's compliance with prescribed rules regarding EFT payments.

(2) If the Department authorizes the request, the taxpayer will be provided a Fedwire Authorization Number and additional information to be included in the free-form field of the Fedwire.

(3) To request authorization from the Department, the taxpayer must contact the EFT Unit. The taxpayer must present the emergency situation which prevents timely compliance under either the ACH Debit method or ACH Credit method, and request authorization to use Fedwire to transfer the payments in question to the State Treasury.

(4) Taxpayers who are granted authorization to use wire transfer as an exception to either the ACH Debit method or ACH Credit method will be given specific instructions regarding the payment information that must accompany the wire transfer.

(5) All wire transfers must be accompanied by an addenda record, in the format specified by the Department, which includes the following information:

- a. Taxpayer identification number; b. Tax type code; c. Tax period; end date; and
- d. Payment type code

(6) The Department will not bear any costs associated with the wire transfer.

(7) Unauthorized Fedwire transfers will constitute late payment and the applicable late payment penalties, interest, and loss of discount shall apply.

(8) Authorized Fedwire transfers which are not received by the State Treasury on or before the due date of the transmitted payments will constitute late payment and the applicable late payment penalties, interest, and loss of discount shall apply. (Act No.91-570) (Adopted through APA effective January 10, 1992)

#### **810-13-1-.18. Grace Periods During Implementation.**

(1) During the early stages of implementing this Act, not to exceed six months from the effective dates of implementation, the Department may, at its discretion, extend a grace period of no more than two business days for taxpayers to resolve unexpected problems which may arise in financial institutions, Federal Reserve facilities, or the Automated Clearing House system, resulting in the taxpayers making late payments. To qualify for a grace period, the taxpayer must demonstrate that a good faith attempt was made to comply with the provisions of these rules, that due diligence was exercised to initiate the payment timely and correctly, and that sufficient funds were available in the taxpayer's bank account, or that circumstances beyond the taxpayer's reasonable control prevented compliance by the required date.

(2) The Department shall consider the taxpayer's experience with EFT payments, the taxpayer's EFT payment history, and the taxpayer's prior compliance with these rules in determining whether to grant the taxpayer a grace period. (Act No.91-570) (Adopted through APA effective January 10, 1992)

#### **810-13-1-.19. Change in Taxpayer Information.**

(1) A taxpayer must provide at least 30 days written notice of any change of information required by the Form EFT 001, Electronic Funds Transfer Authorization Agreement, by submitting a revised Form EFT 001 to:

Alabama Department of Revenue  
EFT Unit  
P O Box 327950  
Montgomery, AL 36132-7950

(Act No.91-570) (Adopted through APA effective January 10, 1992)

#### **810-13-1-.20. Legal Holidays.**

(1) Each year, at least 30 days prior to the beginning of a calendar year, the Department will provide taxpayers required to pay a tax type using EFT with a schedule of holidays to be observed by the Alabama ACH Association, Alabama banks and the Department. (Act No.91-570) (Adopted through APA effective January 10, 1992)

## *Taxpayers Bill of Rights and Uniform Revenue Procedures*

[\*\(Click here to view Numeric Index\)\*](#)

### **810-14-1-.01. Scope of the Rules.**

This chapter sets forth the rules to be used by the Alabama Department of Revenue in the administration of Chapter 2A of Title 40, Code of Alabama 1975, passed during the 1992 regular legislative session. Chapter 2A of Title 40, Code of Alabama 1975, titled the "Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act," was enacted to provide equitable and uniform procedures for the operation of the Department and for all taxpayers when dealing with the Department. These rules are promulgated to implement the act and clarify the rights of the Alabama taxpayer and the role and responsibilities of the Department in administering the state's tax laws. (Act 92-186) (Adopted through APA effective August 19, 1993)

### **810-14-1-.02. Guidelines for Granting Administrative Reviews.**

(1) A taxpayer who does not agree with a notice of preliminary assessment may file a written request for review with the Department in response to the preliminary assessment. This written request shall be referred to as a "petition for review" and should describe specific objections to the preliminary assessment.

(a) The petition must be filed within thirty (30) days of the preliminary assessment date. However, if the thirtieth (30th) day falls on a Saturday, Sunday, or state holiday, the taxpayer has until the next business day to file the petition.

(b) The petition must be submitted to the address shown on the assessment notice.

(2) The Department will review the petition and will schedule a conference if requested by the taxpayer or as otherwise deemed necessary by the Department. The conference will allow the Department and the taxpayer to present their respective positions.



- (3) If a written petition is not timely filed or if a petition is filed and upon review the Department determines that the preliminary assessment is due to be upheld in whole or in part, the Department will enter a final assessment for the amount determined by the Department to be due.
- (4) Final assessments may be appealed to the Department's Administrative Law Division or to circuit court, regardless of whether a petition for review was filed. (Act 92-186) (Adopted through APA effective August 19, 1993)

### **810-14-1-.03. Cost of Transcripts and Recordings.**

- (1) **SCOPE** This regulation applies to the cost of providing a taxpayer, upon the taxpayer's request, with a transcript, copy of a transcript, or copy of an audio recording of any in-person interview between a taxpayer and any officer or employee of the Department.
- (2) **DEFINITIONS** The following term has the meaning ascribed to it for purposes of this regulation:
- (a) **Reasonable advance notice** - This means at least 24 hours unless otherwise approved by the Department.
- (3) **PURPOSE** The purpose of this regulation is to affix specific costs for the taxpayer who requests a transcript, copy of a transcript, or copy of an audio recording of any in-person interview between the taxpayer and any officer or employee of the Department.
- (4) **PROCEDURE**
- (a) Upon reasonable advance notice to the taxpayer, the Department may record any in-person interview between the taxpayer and any officer or employee of the Department.
- (b) If the interview is recorded by the Department and the Department does not intend to have the recording transcribed, but the taxpayer requests a transcript, the Department will send the audio recording to a court reporter for transcription and the taxpayer shall pay for all actual expenses incurred.
- (c) If the interview has been transcribed by the Department and the taxpayer requests a copy of the transcript, the Department will copy the transcript and the taxpayer shall pay \$.20 per page for the cost of copying the transcript.
- (d) If the interview is recorded by the Department and the taxpayer then requests a copy of the audio recording, the Department will reproduce the audio recording and the taxpayer shall pay for the cost of the blank tape plus a \$25.00 fee for administrative costs involved in reproducing the tape.
- (e) Failure of the taxpayer to provide reasonable advance notice of the intent to audio

record an interview scheduled between a taxpayer and any officer or employee of the Department will not be considered sufficient cause not to appear for any in-person interview.

(Act 92-186) (Adopted through APA effective August 19, 1993)

#### **810-14-1-.04. Installment Payment Agreements.**

(1) **SCOPE** This regulation applies to the authority of the Department to enter into written agreements to allow a taxpayer to pay a tax in installment payments.

(2) **DEFINITIONS** The following term has the meaning ascribed to it for purposes of this regulation:

(a) **Jeopardy** - A condition that would prohibit or impede collection of a tax assessment which is characterized by the concealment or transfer of assets or the attempt to flee the state with assets.

(3) **PURPOSE** The purpose of this regulation is to provide guidelines necessary to implement installment payment agreements by the Department.

#### **(4) PROCEDURE**

(a) The Commissioner or his delegate is authorized to enter into a written agreement to allow a taxpayer to pay any tax in installments if it is determined that the collection of the tax will be facilitated through the extension of such agreement.

(b) A written agreement providing for installment payments can only be extended where a final assessment has been entered and is not on appeal.

(c) Written payment agreements shall be limited to a period not exceeding 12 months, provided that, at the Commissioner's discretion, the agreement may be renewed for succeeding periods not to exceed 12 months.

(d) In order for a payment agreement to "facilitate the collection of the tax," the Department must determine that it can collect the tax liability more expeditiously, or the likelihood of collecting the entire tax liability is greater through the extension of a payment arrangement than without one.

1. In the case of employed individuals, the installment payment agreement should result in the monthly payment of an amount which would approximate 25 percent of gross wages; this represents the amount which would be available to the Department through garnishment proceedings. 2. In general, taxpayers whose financial statements indicate the availability of cash or cash equivalent assets available to pay their tax liability will not be entitled to the extension of an installment payment arrangement.

3. Taxpayers having property which may be sold or mortgaged will be looked at on a case by case basis to determine whether the extension of a payment agreement will "facilitate the collection of the tax."

4. Agreements extended to corporations for the payment of trust fund taxes require the personal guarantee of the responsible corporate officer(s) who have personal liability under Sections 40-29-72 and 40-29-73, Code of Alabama 1975, as amended.

(e) Any taxpayer requesting an installment payment agreement from the Department must complete a Collection Information Statement and submit proof of financial information using the forms prescribed by the Department. Such forms must be submitted disclosing all assets and expenses and must be signed under penalties of perjury. Should the taxpayer provide inaccurate or incomplete information, the Commissioner may terminate, alter, or modify the agreement at any time upon notice to the taxpayer.

1. The Department may request updated Collection Information Statements whenever it has reason to believe that the taxpayer's ability to pay has significantly changed.

(f) Any taxpayer receiving an installment payment agreement from the Department has responsibility for making the agreed payment according to the terms of the installment payment agreement. This agreement will specify the payment amount, the payment due date, the address to which the payment is to be directed, and the agreement termination date. Should the taxpayer fail to make a payment according to the terms of the agreement, the Commissioner may terminate the agreement and declare the agreement in default, upon notice to the taxpayer. In the event of default, the Department may collect the balance due by any method allowed by law.

(g) The Commissioner or his delegate may require that all subsequent tax returns for taxes administered by the Department which become due while this agreement is in effect be filed by the due date, and all taxes due in connection with the return be timely remitted, unless the taxpayer has contested the validity or amount of the tax pursuant to the terms of Chapter 2A of Title 40, Code of Alabama 1975.

(h) Any taxpayer who is making payments under the terms of an installment payment agreement must promptly notify the Department of any significant change in financial condition which would affect the ability to pay the liability. Since a payment agreement is extended due to the taxpayer's inability to pay the assessment in full, any change in circumstances which would increase the ability to pay the liability may result in the alteration, modification, or termination of the agreement.

(i) An installment payment agreement may be terminated by the Commissioner if there is reason to believe that the collection of the tax liability which is the subject of the agreement is in jeopardy.

(j) The extension of an installment payment agreement will in no way prevent the Department from recording liens with the Secretary of State, county probate offices, or any other location necessary to protect the state's interest in property of the taxpayer. Liens may not be released

until the final payment has been received and cleared, unless the Commissioner elects otherwise.

(k) Any refund which may be due from the Department while an installment payment agreement is in effect may be credited to the liability.

(l) During the period of an installment payment agreement, additional interest as provided by law will accrue on the total unpaid balance at the rate established under the authority of Section 40-1-44, Code of Alabama 1975.

(m) Except in the case of jeopardy, prior notice will be given should it become necessary to alter, modify, or terminate an installment payment agreement with a taxpayer. Notice may be provided by either of the following methods:

1. written notice to the taxpayer's last known address, or
2. delivery of written notice in person.

(Sections 40-2A-7(a)(5) and 40-2A-4(b)(6)b.3., Code of Alabama 1975 (Adopted through APA effective August 19, 1993, amended August 3, 2000)

#### **810-14-1-.05. Procedure for Abatement of Penalties.**

(1) If the Department fails to substantially comply with Section 40-2A-4, Code of Alabama 1975, the Commissioner or his delegate is hereby empowered to abate any penalty otherwise arising from an examination or assessment upon written application for abatement of penalties by the taxpayer or for other good cause shown.

(a) The taxpayer's written application should outline the basis of the request for the abatement.

(b) Written application by the taxpayer should be made to the supervisor of the appropriate assessing section or division. The written application should be attached to an audit or tax return when it is presented to the supervisor for assessment proceedings or when the audit is paid.

(c) Upon receipt of a written application for abatement or upon request by a taxpayer assistance officer, the supervisor shall request that a recommendation be submitted from the employee who determined that additional taxes are due.

(d) The supervisor shall then make a recommendation regarding the abatement to the appropriate division chief; and the division chief, in turn, shall then be responsible for making a final recommendation for abatement of penalties to the Commissioner or his delegate.

(e) Failure by the Department to comply with any provision of Section 40-2A-4, Code of

Alabama 1975, shall not prohibit the Department from assessing any tax, nor excuse the taxpayer from timely complying with any time limitations.

(2) The Department may abate any penalties attributable to erroneous written advice furnished to a taxpayer by an employee of the Department if:

(a) the employee provided the written advice in good faith while acting in an official capacity;

(b) written advice was reasonably relied on by the taxpayer;

(c) the written advice was given in response to a specific written request of the taxpayer; and

(d) the penalties did not result from the taxpayer's failure to provide adequate or accurate information.

(Act 92-186) (Adopted through APA effective August 19, 1993)

### **810-14-1-.06 Revenue Rulings.**

(1) The Commissioner of Revenue may, at his or her discretion, issue Revenue Rulings as authorized by Section 40-2A-5, Code of Alabama 1975. Revenue Rulings apply only to the recipient of the request and have no precedential value to other taxpayers.

(2)(a) Any request for a revenue ruling must be written in letter form with a duplicate of the request and supporting documents attached.

(b) A ruling request should be addressed to the Secretary, Department of Revenue, and must be signed by the taxpayer or the taxpayer's authorized representative. The term "authorized representative" has the meaning ascribed to it in Section 40-2A-3(3), Code of Alabama 1975.

(c) Each question or subpart of a question shall be considered a separate revenue ruling request and must be accompanied by a \$200.00 fee, in accordance with the provisions of §40-2A-5, Code of Alabama 1975.

(d) The ruling request and applicable fee should then be mailed to the following address:

Secretary of the Department  
Alabama Department of Revenue  
P. O. Box 327001

Montgomery, Alabama 36132-7001.

(3) A ruling request must include the following:

(a) A statement of all facts relevant to the determination. The statement of relevant facts must include the following:

1. names, addresses, telephone numbers, and social security numbers of all relevant parties;
2. a full and precise statement of the business reasons for the transaction; and
3. a complete, detailed description of the transaction.

(b) A statement of the taxpayer's views regarding the tax consequences of the transaction.

1. A taxpayer may seek a certain determination on the issues raised in the ruling request. In such instance, the taxpayer must furnish an explanation of the grounds for that determination.
2. Even if the taxpayer does not request a specific determination on the issues raised in the ruling request, the taxpayer still must submit an opinion on the tax consequences of the proposed transaction.

(c) The authority upon which the taxpayer's position regarding the proposed transaction is based.

1. The taxpayer should inform the Department in its ruling request of any statute, regulation or court decision that the taxpayer believes is contrary to the position taken by the Department on the issue and discuss the implications of these authorities.
2. If no contrary authority is found, the taxpayer should submit a statement to this effect to facilitate the ruling request.

(d) Copies of all documents relative to the transaction. The following list is illustrative, but not exhaustive, of the types of documents that should be attached: contracts, wills, deeds, agreements, and legal documents.

(e) A statement that to the best of the taxpayer's knowledge, the identical issue or a similar issue has not been ruled on by the Department with regard to the taxpayer or a predecessor. If such a ruling request has been made, the taxpayer must furnish the date and result of the revenue ruling. In addition, the taxpayer must include a statement as to whether an identical issue was submitted previously by that taxpayer and was later withdrawn prior to the issuance of a revenue ruling.

(f) A statement that the request is for a proposed transaction or event, and that no taxes have accrued or will accrue prior to the issuance of the ruling with respect to the transactions, events, or facts contained

in the request. If the transaction or event subject to the ruling request is in the nature of a series of transactions or events whereby some of the transactions or events have occurred in the past and some of the transactions or events are prospective in nature, a ruling will not be issued.

(g) The following perjury declaration:

1. “Under penalties of perjury, I declare that I have examined this request, including the accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested ruling are true, correct, and complete.”

2. The perjury declaration must be signed by the taxpayer and the taxpayer’s authorized representative. Changes in the ruling request or additional factual information sent at a later time must also include the perjury declaration.

(4) (a) All revenue rulings shall be maintained in the office of the Secretary of the Department, and shall be available for public inspection and copying, within 60 days following their issuance (except as provided in subparagraph (c) of this paragraph (4)), at a cost to be determined by the Secretary.

(b) “Issuance” of a revenue ruling occurs upon the mailing of the revenue ruling to the taxpayer to whom it pertains.

(c) Within thirty (30) days after the revenue ruling was issued, a taxpayer may submit a request for delay of public inspection. A request for delay shall contain the date on which it is expected that the underlying transaction will be completed. The request for delay shall contain a suggested issuance date and a statement from which the Commissioner may determine that good cause exists to warrant such delay.

(5)(a) Prior to making any such publication, the Department shall delete from the text of such revenue ruling all names, addresses, titles, figures, dates, and other information which may identify the particular taxpayer who requested the revenue ruling. If a revenue ruling contains trade secrets or other confidential information, the Department shall, upon written request of the taxpayer, delete such information prior to publication.

(b) If information other than names, addresses, and identifying information needs to be deleted, the taxpayer must include with the ruling request a separate statement of proposed deletions and the statutory basis for each deletion.

(c) The statement of proposed deletions must accompany the ruling request, but should not be included in or referred to in the request. The material to be deleted should be placed in brackets.

(d) The taxpayer may request additional deletions after the ruling request is submitted by submitting an additional statement of proposed deletions.

- (6) (a) Either the taxpayer or the Department may request a conference regarding a ruling request.
- (b) The Department may grant or deny the request by the taxpayer. Generally, the Department will grant the request only if holding a conference will help the Department make a determination with respect to the revenue ruling.
- (7) It shall be the practice of the Department to process ruling requests in the order received. Requests for processing out of order, made in writing in a separate letter submitted with the request or subsequent thereto and showing clear need for such treatment, will be given consideration as the particular circumstances warrant.
- (8) (a) Ruling requests that do not comply with the requirements set out in this regulation will be returned to the taxpayer. The requirements that have not been met or additional information that is needed will be explained to the taxpayer so that the request may be modified to meet the requirements of this regulation.
- (b) The taxpayer shall have thirty (30) days from the date the ruling request was returned to modify the request or to provide the additional information requested. If the taxpayer fails to do so in the specified time period, the Department may close the file and reopen it after the taxpayer modifies the request or the additional information has been received. If the ruling request is closed and reopened, the ruling request will be treated as a new request for purposes of determining when the ruling request was received.
- (9) If the taxpayer withdraws a ruling request, all exhibits and correspondence submitted with the request or pertaining to the request may be retained by the Department. The Commissioner may furnish his views to the division which has or will have audit jurisdiction of the taxpayer's return. (Sections 40-2A-7(a)(5) and 40-2A-5(b), Code of Alabama 1975) (History: (Adopted through APA effective August 19, 1993; Amended July 24, 1995; Amended September 6, 2002; Amended January 19, 2005)

#### **810-14-1-.07. Maintenance of Records.**

- (1) Taxpayers subject to a tax or determination of value must keep and maintain an accurate and complete set of permanent books of accounts and records, including inventories, that are sufficient to establish the correct amount of tax or value, deductions, credits, exemptions, and other matters required to be shown for any tax or determination of value. Taxpayers must keep all documentation that proves the amounts shown on a tax return or for the determination of value. Copies of tax returns or determinations of value, schedules, and statements should be retained as part of the taxpayer's records. In the absence of sufficient records, the burden of proof shall remain with the taxpayer to verify amounts shown on a tax return or for the determination of value.



(2) Such records and books shall be made available to the Department at a reasonable time and location. "Reasonable time" shall be considered to be during normal business hours of the Department. "Reasonable location" shall be considered to be the taxpayer's place of business or the offices of the taxpayer's authorized representative. Failing or refusing to maintain such records and books may be punishable as contempt, as provided in cases of contempt in circuit court. Also possible are the penalties for negligence, fraud, intentional disregard of rules and regulations, or failure to file a return.

(3) The required books or records must be kept available at all times for inspection by the Department and must be retained as long as the Department has legal authority to assess tax to which the books or records pertain. Generally, books and records that support an item of tax, value, deduction, credit, or exemption on a tax return should be kept for at least the period of limitations for that return. Usually this is three years from the date the return was due or three years from the date on which the return was paid, whichever is later. Exceptions to this period of limitations include, but are not limited to the following:

(a) taxes may be assessed at any time if the taxpayer fails to file a return or files a false return with the intent to evade tax;

(b) taxes may be assessed within six years on all tax returns from which more than 25 percent of the taxable base, as stated in the return, is omitted; and

(c) if a taxpayer appeals an audit/denial/revocation, which is under examination, or currently in litigation for a period beyond three years after, records for all periods in question should be maintained.

(Section 40-2A-7(b)(2)b., Code of Alabama 1975) (Adopted through APA effective August 19, 1993, amended May 7, 1996)

## **810-14-1-.07.01. Model Recordkeeping and Retention Regulation in an Electronic Environment.**

### **(1) PURPOSE**

(a) The purpose of this regulation is to define the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information under Section 40-2A-7(a)(5), Code of Alabama 1975. It is also the purpose of the regulation to address these requirements where all or a part of the taxpayer's records are received, created, maintained or generated through various computer, electronic and imaging processes and systems.

### **(2) DEFINITIONS**

(a) For purposes of this regulation, these terms shall be defined as follows:

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database. 2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format. 3. "Hard copy" means any documents, records, reports or other data printed on paper. 4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems. 5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" as used in this regulation means any person subject to or liable for any tax administered by the department; any person required to file a return with respect to, or to pay, or withhold and remit any tax administered by the department or to report any information or value to the department; or any person required to obtain or holding any interest in any license, permit, or certificate of title issued by the department, or any person that may be affected by any act or refusal to act by the department, or to keep any records required by Chapter 2A, Title 40, Code of Alabama 1975.

### (3) **RECORDKEEPING REQUIREMENTS-GENERAL**

(a) A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability. All required records must be made available on request by the Alabama Department of Revenue. Such records shall include all records needed to make a proper determination of tax liability.

(b) If a taxpayer retains records required to be retained under this regulation in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the Alabama Department of Revenue in machine-sensible format upon request of the Alabama Department of Revenue.

(c) Nothing in this regulation shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this regulation. However, this subsection shall not relieve the taxpayer of the obligation to comply with paragraph (3)(b) of this regulation.

### (4) **RECORDKEEPING REQUIREMENTS - MACHINE-SENSIBLE RECORDS**

(a) General Requirements

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the Alabama Department of Revenue upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this regulation are met. 2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

#### (b) Electronic Data Interchange Requirements

1. Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the Alabama Department of Revenue to interpret the coded information.

2. The taxpayer may capture the information necessary to satisfy paragraph (4)(b) 1. at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the Alabama Department of Revenue. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

#### (c) Electronic Data Processing Systems Requirements

1. The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

#### (d) Business Process Information

1. Upon the request of the Alabama Department of Revenue, the taxpayer shall

provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records. 2. The taxpayer shall be capable of demonstrating

- (i) the functions being performed as they relate to the flow of data through the system; (ii) the internal controls used to ensure accurate and reliable processing; and
- (iii) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

3. The following specific documentation is required for machine-sensible records retained pursuant to this regulation:

- (i) record formats or layouts; (ii) field definitions (including the meaning of all codes used to represent information); (iii) file descriptions (e.g., data set name); and
- (iv) detailed charts of accounts and account descriptions.

#### **(5) RECORDS MAINTENANCE REQUIREMENTS**

(a) The Alabama Department of Revenue recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. [The NARA standards may be found at 36 Code of Federal Regulations, Part 1234, July 1, 1995, edition.]

(b) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

#### **(6) ACCESS TO MACHINE-SENSIBLE RECORDS**

(a) The manner in which the Alabama Department of Revenue is provided access to machine-sensible records as required in paragraph (3)(b) of this regulation may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(b) Such access will be provided in one or more of the following manners:

1. The taxpayer may arrange to provide the Alabama Department of Revenue with the hardware, software and personnel resources to access the machine-sensible records.
2. The taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine-sensible records.
3. The taxpayer may convert the machine-sensible records to a standard record format specified by the Alabama Department of Revenue, including copies of files, on a

magnetic medium that is agreed to by the Alabama Department of Revenue.

4. The taxpayer and the Alabama Department of Revenue may agree on other means of providing access to the machine-sensible records.

## **(7) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY**

(a) In conjunction with meeting the requirements of paragraph (4), a taxpayer may create files solely for the use of the Alabama Department of Revenue. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of paragraph (4). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(b) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

## **(8) ALTERNATIVE STORAGE MEDIA**

(a) For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this regulation to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(b) Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

1. Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche or other storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.
2. Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under paragraph (10).
3. Upon request by the Alabama Department of Revenue, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.
4. When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or

numerals being recognizable as words or complete numbers. 5. All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

6. There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

## **(9) EFFECT ON HARD-COPY RECORDKEEPING REQUIREMENTS**

(a) Except as otherwise provided in this section, the provisions of this regulation do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in paragraph (8) of this regulation.

(b) If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created.

(c) Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in paragraph (4)(b)1.

(d) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(e) Nothing in this section shall prevent the Alabama Department of Revenue from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

## **(10) RECORDS RETENTION - TIME PERIOD**

(a) All records required to be retained under this regulation shall be preserved pursuant to Section 40-2A-7(a)(5), Code of Alabama 1975 unless the Alabama Department of Revenue has provided in writing that the records are no longer required.

(Section 40-2A-7(a)(5), Code of Alabama 1975) (Adopted through APA effective September 10, 1998)

## **810-14-1-.08. Fees and Costs for Witnesses.**

(1) **SCOPE** This regulation applies to the Department's authority to make payments to certain persons who are asked to provide information to the Department. Also, it specifies that witnesses, in general, will not be reimbursed for actual expenses incurred, but instead will be paid in accordance with the payment rates established by regulations.

(2) **DEFINITIONS** The following terms have the meanings ascribed to them for purposes of this regulation:

(a) **Directly incurred costs** - Directly incurred costs are costs incurred solely and necessarily as a consequence of searching for, reproducing, or transporting records in order to comply with a summons. They do not include a proportionate allocation of fixed costs, such as overhead, equipment depreciation, etc. However, where a third party's records are stored at an independent storage facility that charges the third party a search fee to search for, reproduce, or transport particular records requested, these fees are considered to be directly incurred by the summoned third party.

(b) **Reproduction costs** - Reproduction costs are costs incurred in making copies or duplicates of summoned documents, transcripts, and other similar material.

(c) **Search costs** - Search costs include only the total cost of personnel time directly incurred in searching for records or information and the cost of retrieving information stored by computer. Salaries of persons locating and retrieving summoned material are not to be included in search costs. Also, search costs do not include salaries, fees, or similar expenditures for analysis of material or for managerial or legal advice, expertise, or research, or time spent for these activities.

(d) **Third party** - A third party is any person served with a summons, other than a person with respect to whose liability a summons is issued, or an officer, employee, agent, accountant, or attorney of that person.

(e) **Third party records** - Third party records are books, papers, records, or other data in which the person with respect to whose liability a summons is issued does not have a proprietary interest at the time the summons is served.

(f) **Transportation costs** - Transportation costs include only costs incurred to transport personnel to search for records or information requested and costs incurred solely by the need to transport the summoned material to the place of examination. These costs do not include the cost of transporting the summoned witness for appearance at the place of examination.

(3) **PURPOSE** The purpose of this regulation is to outline the reimbursement procedures for third parties to follow in providing summoned records and to outline the reimbursement procedures for summoned witnesses.

(4) **Conditions and rates of payments**

(a) **Basis for payment** Payment for search, reproduction, and transportation costs will be made only to third parties served with a summons to produce third party records or information and only for material requested by the summons. Payment will be made only for these costs that are both directly incurred and reasonably necessary. Search, reproduction, and transportation costs must be considered separately in determining whether costs are

reasonably necessary. No payment will be made until the third party has satisfactorily complied with the summons and has submitted to the Department employee before whom the third party was summoned an itemized bill or invoice showing specific details concerning the costs. If a third party charges any other person for any cost for which the third party is seeking payment from the Department, the amount charged to the other person must be subtracted from the amount the Department may pay.

(b) **Payment rates** The following rates are established:

1. **Search costs** For the total amount of personnel time required to locate records or information, \$8.50 per person hour may be reimbursable. For retrieval of information stored by computer in the format in which it is normally produced, actual costs, based on computer time and necessary supplies may be reimbursed, except that personnel time for computer search is payable as provided above.
2. **Reproductions costs** For copies of documents, \$.20 per page for summoned materials may be reimbursable. For photographs, films and other materials, actual cost may be reimbursed, except that personnel time is payable only under subparagraph (4)(b)1. above.
3. **Transportation costs** For transportation costs, actual cost may be reimbursed, except that personnel time is payable only under subparagraph (4)(b)1. above.

(5) **Attendance fees** A summoned person shall be paid an attendance fee for each day's attendance. The attendance fee shall apply to the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of the attendance or at any time during the attendance. The attendance fee is equivalent to the amount paid under 28 USC Section 1821(b) to witnesses in attendance at courts of the United States at the time of the summoned person's appearance.

(a) **Travel allowances** A summoned person who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from the summoned person's residence by the shortest practical route in going to and returning from the place of attendance. Such a summoned person shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished. A travel allowance equal to the mileage allowance which the State of Alabama has prescribed for official travel of employees of the state government shall be paid to each summoned person who travels by privately owned vehicle. Toll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt) shall be reimbursed in full to a summoned person incurring those expenses.

(b) **Subsistence allowances** A subsistence allowance shall be paid to a summoned person (other than a summoned person who is incarcerated) when an overnight stay is required at the place of attendance because the place is so far removed from the residence of the summoned person as to prohibit return thereto from day to day. A subsistence allowance for a summoned person shall be paid in an amount not to exceed the maximum per diem allowance



prescribed for official travel by employees of the state government. (Act 92-186) (Adopted through APA effective August 19, 1993)

**810-14-1-.09. Entry of Preliminary Assessment; Final Assessment of Uncontested Tax; Execution of Preliminary and Final Assessments.**

(1) Should the Department determine that the amount of tax reported on a return is incorrect or if no return is filed, the Department is authorized to calculate the correct tax based on the most accurate and complete information reasonably obtainable by the Department. After the Department makes a determination of the correct amount of tax, a preliminary assessment, including applicable penalties and interest, may be entered.

(a) A tax return may be deemed "incorrect" for the following reasons:

1. the taxpayer fails to properly complete a return as required; 2. the taxpayer fails to attach supporting documentation and/or schedules as required; 3. the taxpayer fails to sign a return; 4. the taxpayer fails to calculate the amount(s) due correctly; 5. the taxpayer fails to properly substantiate credits, deductions, and/or discounts; 6. the taxpayer provides false or fraudulent information and/or data on a return; or 7. the taxpayer fails to meet other statutory requirements regarding the reporting of any items used in calculating a taxable base for state tax purposes.

(2) When the Department has required information necessary to formulate a determination of value, the Department shall issue a preliminary assessment to the respective taxpayer in accordance with the rules and regulations contained herein, while also complying with the procedures required under Sections 40-14-70, 40-21-23, and 40-21-52, Code of Alabama 1975.

(3) In the event any of the following occurs: the amount of tax reported on a return is undisputed by the Department; the taxpayer consents in writing to the amount of any deficiency; or the taxpayer consents to the amount of any preliminary assessment in writing as provided by regulation, the Department may enter a final assessment without first having entered a preliminary assessment. The final assessment shall be for the amount of said tax, plus applicable penalty and interest; provided, however, that the Department may at any time enter a final jeopardy assessment pursuant to the provisions of Sections 40-17A-12, 40-29-90, and 40-29-91, Code of Alabama 1975.

(a) For purposes of this regulation, "deficiency" means the amount by which the tax, penalties, and interest imposed exceed the amount of tax, penalties, and interest already paid by the taxpayer. (Act 92-186) (Adopted through APA effective August 19, 1993)

**810-14-1-.10. Time Limitation for Entering Preliminary Assessment.**

(1) Any preliminary assessment must be entered within three years from the due date of the return, or three years from the date the return is filed with the Department, whichever is later, or if no return is required to be filed, within three years of the due date of the tax. Where a properly filed extension has been granted, the "due date" shall be the last day allowed by the extension to file the return.

(a) The 100 percent penalty assessments entered under the authority of Sections 40-29-72 and 40-29-73, Code of Alabama 1975, shall be subject to the five-year statute of limitations as provided for in Section 40-2A-7(b)(2)c., Code of Alabama 1975.

(Act 92-186) (Adopted through APA effective August 19, 1993)

#### **810-14-1-.11. Six-Year Time Limitation for Omission of 25 Percent or More of Taxable Base.**

(1) **DEFINITION** The following term has the meaning ascribed to it for purposes of this regulation:

(a) **Taxable Base** - This means the gross income, gross proceeds from sales, gross receipts, capital employed or other amounts on which the tax paid with a return is computed.

(2) A preliminary assessment may be entered within six years from the due date of the return or six years from the date the return was filed with the Department on all tax returns from which more than 25 percent of the taxable base, as stated in the return, was omitted.

(3) For purposes of this regulation, the amount omitted from the taxable base shall not include any amounts disclosed in the return or the attachments to the return which would identify to the Department the nature and amount of the item.

(a) If the omitted amount of taxable base is stated in the return or in a statement attached to the return in a manner adequate to apprise the Department of the nature and amount of the item, then a preliminary assessment must be entered within three years from the date the return was due or three years from the date on which the return was filed, whichever is later. Where a properly filed extension has been granted, the "due date" shall be the last day allowed by the extension to file the return.

(Section 40-2A-7(b)(2)b., Code of Alabama 1975) (Adopted through APA effective August 19, 1993, amended May 7, 1996)

#### **810-14-1-.12. Second Inspection of a Taxpayer's Books and Records.**

Only one inspection of a taxpayer's books and records relating to each type of tax administered by the

Department shall be made for each taxable period, unless the Department is requested in writing by the taxpayer, or unless the Commissioner, after investigation, notifies the taxpayer in writing that an additional examination is necessary. Normally, one of the three following conditions will exist before the Department will conduct a second examination of a taxpayer's books and records:

(1) there is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact;

(2) a prior examination involved a substantial error based on an established Department position that existed at the time of the previous examination; or

(3) other circumstances exist that indicate that failure to conduct a second examination would be a "serious administrative omission."

(Act 92-186) (Adopted through APA effective August 19, 1993)

### **810-14-1-.13. Service of Preliminary and Final Assessments.**

(1) **SCOPE** This regulation relates to the authority of the Department to use varying methods of service when notifying a taxpayer that a preliminary or final assessment has been entered.

(2) **PURPOSE** The purpose of this regulation is to establish procedures regarding the methods of service by which a preliminary or final assessment may be delivered to a taxpayer.

(3) **PROCEDURE**

(a) Whenever the Department determines that a preliminary assessment should be entered, the notice or copy of the notice shall be mailed to the taxpayer's last known address, promptly after entry of the assessment, by one of the following methods:

1. first class U.S. mail, or
2. certified mail with return receipt requested

(b) At the option of the Department, however, any preliminary or final assessment may be delivered to the taxpayer and/or the taxpayer's representative in person by an agent of the Department.

(c) The service of a final assessment varies depending upon the type of assessment (i.e., tax or value) and the amount of the assessment, specifically:

1. final assessments of tax of \$500 or less shall be sent by first class U.S. mail to the taxpayer's last known address and/or the taxpayer's authorized representative;
2. final assessments of tax greater than \$500 shall be sent certified mail with return

receipt required to the taxpayer's last known address and/or the taxpayer's authorized representative; and

3. final assessments of value shall be sent by first class U.S. mail to the taxpayer's last known address and/or the taxpayer's authorized representative.

(d) The taxpayer's "last known address" shall be deemed to be the last address provided to the Department by the taxpayer unless, the Department determines that such address has changed subsequent to the last return having been filed.

(e) In the event that the taxpayer has never furnished the Department with an address, as in the case of out-of-state residents being assessed with the "100 percent penalty," the Department may rely on the best information available in determining where the notice is to be sent. Those sources may include city directories, post office verification letters, current telephone directories, records of the U.S. Bankruptcy Court, motor vehicle records, county tax assessors' records, IRS records, and records of the Department of Industrial Relations.

(f) A preliminary or final assessment is deemed to have been properly served by the Department if the assessment is served promptly after entry in accordance with (a), (b), (c), (d), or (e) above. If a preliminary or final assessment sent by certified mail is returned to the Department "unclaimed" or "refused," the Department will remail the assessment by first class U. S. mail.

(Act 92-186) (Adopted through APA effective August 19, 1993)

#### **810-14-1-.14. Filing a Written Petition for Review.**

(1) If a taxpayer disagrees with a preliminary assessment as entered by the Department, the taxpayer may file a written petition for review with the Department within thirty (30) days from the date of entry of the preliminary assessment. Accordingly, if the thirtieth (30th) day falls on a Saturday, Sunday, or state holiday, the taxpayer has until the next business day to file his/her written petition for review.

(a) For purposes of this regulation, the term "written petition for review" shall mean any written response to a preliminary assessment which raises the issue of an incorrect liability as established by the assessment. The petition should include the following:

1. a statement that the taxpayer wants a review of the preliminary assessment,
2. specific objections to the preliminary assessment,
3. the taxpayer's name and address,
4. the date of the preliminary assessment,
5. the tax periods or years involved,
6. an itemized schedule of the adjustments and findings protested,
7. a statement of facts supporting the taxpayers position regarding any factual issue, and
8. a statement outlining the law or authority relied upon.

(b) If a petition for review is timely filed, the Department shall, upon written request of

the taxpayer or if the Department otherwise deems it necessary, schedule a conference with the taxpayer for the purpose of allowing the taxpayer and the Department to present their respective positions, discuss any omissions or errors, and attempt to reach an agreement. The taxpayer will be notified by first class U.S. mail of the conference date. All notices shall include the conference time, the address where the conference is to be held and, if the conference is not at the request of the taxpayer, the items in dispute which will be discussed during the conference.

(Act 92-186) (Adopted through APA effective August 19, 1993)

### **810-14-1-.15. Entry of Final Assessment.**

(1) The Department may enter a final assessment for determinations of value, or for the nonpayment or underpayment of any tax administered by the Department, including any applicable interest and penalty, when:

(a) a petition for review is not timely filed;

(b) a petition for review is filed, and upon review the Department determines that the preliminary assessment is due to be upheld in whole or in part; or

(c) the Department determines that a final assessment is due to be entered pursuant to the provisions contained in Section 40-2A-7(b)(1)b., Code of Alabama 1975.

(2) The Commissioner is authorized to make all final assessments of all taxes and determinations of value administered by the Department. The Commissioner is further authorized to delegate such authority to other employees of the Department such as the Assistant Commissioner, the Department Secretary, division chiefs, and other employees, as appropriate. The Commissioner may appoint one or more such employees of the Department as an assessment officer for the purpose of entering final assessments.

(3) The final assessment must include, but may not be limited to, the following information:

(a) the name and tax identification number of the taxpayer, if known;

(b) the last known address of the taxpayer;

(c) character or type of tax/value of the liability assessed;

(d) the taxable period or periods;

(e) the amount of the final assessment, including applicable interest and penalty; and

(f) the date of entry of the final assessment.

(4) The final assessment shall be entered by the Commissioner or an assessment officer by signing the final assessment document. However, a final assessment document may also be signed by facsimile signature if a summary record which includes the information on the final assessment has been signed by the Commissioner or his delegate. (Act 92-186) (Adopted through APA effective August 19, 1993)

#### **810-14-1-.16. Procedure for Appeal from Final Assessment.**

(1) A taxpayer may appeal a final assessment to the Administrative Law Division of the Department of Revenue or to the circuit court, as provided below.

(2) If the taxpayer chooses to appeal to the Department's Administrative Law Division, the taxpayer must notify the Administrative Law Judge in writing of the intent to appeal. The written appeal notice must be filed with the Administrative Law Judge within thirty (30) days of the final assessment date. The notice of appeal must contain the taxpayer's name, address, telephone number, type of tax and tax period(s) being appealed, and a brief statement explaining the objection(s) to the final assessment. A photocopy of the final assessment should be attached to the notice of appeal. The appeal should be sent to the following address:

Alabama Department of Revenue  
Administrative Law Division  
P. O. Box 320001  
Montgomery, AL 36132-0001

(3) If the taxpayer chooses to appeal to the circuit court, the taxpayer may appeal to either the Montgomery County Circuit Court or the circuit court of the Alabama county in which the taxpayer resides or has a principal place of business.

(4) If the taxpayer appeals to circuit court, the taxpayer must file a written notice of appeal within thirty (30) days of the final assessment date with both the Secretary of the Department and the clerk of the circuit court in the county where the appeal is filed. The Department's copy should be sent to the following address:

Secretary of the Department  
Alabama Department of Revenue  
P. O. Box 327001  
Montgomery, AL 36132-7001

(5) If the taxpayer appeals to circuit court, the taxpayer must either pay the total tax, interest, and any penalty shown on the final assessment in full or post a supersedeas bond with the court in double the amount of the total tax, interest, and any penalty shown on the final

assessment. However, if the taxpayer can show to the satisfaction of the clerk of the circuit court that the taxpayer's net worth is \$20,000 or less, the taxpayer shall be exempt from the requirement of either paying the assessment plus interest and any penalty shown on the final assessment in full or posting a supersedeas bond. Net worth shall be computed by subtracting the taxpayer's liabilities from assets.

(6) A taxpayer may appeal a final assessment to either the Administrative Law Division or the Department or to the circuit court even though the taxpayer has paid the tax in issue prior to making the appeal.

(Sections 40-2A-7(b)(5)b. and 40-2A-9 Code of Alabama 1975) (Adopted through APA effective August 19, 1993, amended May 7, 1996)

#### **810-14-1-.17. Procedure for Refund of Local Taxes.**

(1) If the Department is required to make a refund of a county or municipal tax administered by the Department, the refund shall be made from the taxes currently collected and undistributed from the local government's account with the Department. If the money on hand is insufficient to pay the refund in full, the Department may "accrue future collections" until the amount of the refund can be made. Alternatively, a taxpayer may be allowed to claim a credit on any future county or municipal returns, up to the amount of refund due.

(2) In the case of refunds involving county hazardous waste fees, overpayments shall only be made from current collections until the overpayment is satisfied.

(Act 92-186) (Adopted through APA effective August 19, 1993)

#### **810-14-1-.18. Petitions for Refund Allowed.**

(1) Any taxpayer may file a written petition for refund of any taxes erroneously paid to the Department. Such petition should include the following:

- (a) a written statement that the taxpayer is requesting a refund;
- (b) the taxpayer's name, social security number or FEIN, and address;
- (c) the type of tax;
- (d) the tax periods or years involved;
- (e) the amount of refund requested;

(f) a statement of the relevant facts and the reason the payment was erroneous; and

(g) an attachment of any documentation sufficient to provide proof of an erroneous payment. (Examples of documentation may include: invoices, receipts, check copies, accrual records, copies of returns, etc.)

(2) Any petition for refund providing the foregoing information shall be sufficient to satisfy the statutory time limits for requesting refunds. However, the Department may subsequently require the taxpayer to provide additional information as necessary. An amended tax return reflecting a refund of taxes due shall be considered a petition for refund.

(3) Joint petitions for refund must be filed for taxes in which the taxpayer collects and remits the tax on behalf of the purchaser/consumer. Such taxes include, but may not be limited to the following: sales or use taxes, public utilities taxes, and any transient occupancy tax. Joint petitions for refund should include the following:

(a) a written statement that the taxpayer and the consumer/purchaser are requesting a refund, such statement must be signed by both the taxpayer and the consumer/purchaser;

(b) the taxpayer's and the consumer's/purchaser's names, social security number or FEIN, and addresses;

(c) the type of tax;

(d) the tax periods or years involved;

(e) the amount of refund requested; and

(f) a statement of the relevant facts and the reason the payment was erroneous

(g) an attachment of any documentation sufficient to provide proof of an erroneous payment. (Examples of documentation may include: invoices, receipts, check copies, accrual records, copies of returns, etc.)

(4) Any joint petition for refund providing the foregoing information shall be sufficient to satisfy the statutory time limits for requesting refunds. However, the Department may subsequently require the taxpayer and/or the consumer/purchaser to provide additional information as necessary. Any amended tax return reflecting a refund of taxes due shall be considered a petition for refund.

(Act 92-186) (Adopted through APA effective August 19, 1993)

### **810-14-1-.19. Time Limitations for Filing Petitions for Refund.**



(1) A petition for refund must be filed with the Department or an automatic refund pursuant to Section 40-29-71, Code of Alabama 1975, or a credit allowed, within three years from the date the return was filed, or two years from the date of payment of the tax, whichever is later, or, if no return was timely filed, two years from the date of payment of the tax.

(a) Limit where petition filed within three-year period. If the petition for refund made on a return (or a subsequent amended return) is filed within the three-year period from the date the return is due, the amount of the refund shall not exceed the portion of the tax paid (or deemed paid) within that three-year period, plus that amount paid within the period of any extension of time for filing the return.

(b) Limit where petition not filed within three-year period. If the petition was not filed within such three-year period, the amount refunded may not exceed the portion of the tax paid within two (2) years before the petition was filed.

(c) Limit where petition filed for refund/credit of final assessment. A petition for refund or credit of a final assessment must be filed by the taxpayer within two years from the date the final assessment was paid.

(d) In cases involving gasoline, motor fuels, tobacco, and playing cards taxes, certain entities other than the taxpayer who originally paid the taxes to the Department may file a petition for refund. These entities include those associations, nonprofit corporations, and organizations who are expressly exempt by the following sections: 40-9-9 through 40-9-13, 40-9-23, 40-17-104, 40-17-122, 40-17-220, 22-51-13, 11-50-412, and 11-88-16, Code of Alabama 1975. In such cases, the petition for refund must be filed within two years from the date of the purchasing invoice for said taxes.

(2) The return shall be considered as filed on the original due date if the tax is paid or the return was actually filed before the original due date. For purposes of this paragraph, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer. An original return filed after the due date shall be considered as filed on the original due date for purposes of petitioning for refund.

(3) Date of payment - Any tax deducted and withheld at the source during any calendar year under Section 40-18-71, Code of Alabama 1975, shall, in respect of the recipient of the income from which the tax was withheld, be deemed to have been paid by the taxpayer on the due date of the return, whether or not timely filed.

(a) Any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the income tax return for the tax year in question, whether or not timely filed. This shall be determined without regard to any extension of time for filing such return.

(b) EXAMPLE - On June 15, 1992, the taxpayer filed an amended individual income tax return for calendar year 1988 reflecting an overpayment of taxes paid through withholding. Since such

taxes are considered to have been paid on April 15, 1989, the refund of such withholding taxes will be denied since more than three years have passed since the original return was filed and more than two years have passed since such taxes are considered as having been paid.

(c) For purposes of this regulation, the date of payment for privilege licenses shall be the date the license was issued by the appropriate probate judge or license issuing official, whether the license was issued for current or delinquent license years. A license date of payment is evidenced by the issuing date, which appears on the face of the license.

(4) Limitation in case an extension agreement is executed. If an agreement under the provisions of Section 40-2A-7(b)(2)i., Code of Alabama 1975, extending the period for assessment of a tax administered by the Department is made within the period prescribed in paragraph (1) of this regulation for the filing of a petition for credit or refund, then the period within which a petition for refund may be filed or a refund may be allowed, or made if no petition is filed, is the period within which the Department may make an assessment pursuant to such agreement or any extension thereof.

(5) In the case of loss years which began before January 1, 1990, nothing in this regulation shall preclude the application for refund of income taxes pursuant to the provisions of Section 40-18-15, Code of Alabama 1975, relating to the carryback of a net operating loss deduction.

(6) If payments are made after the due date of a return (such as under an extension of time or by examination adjustments), the three-year limitation period prescribed in paragraph (1) of this regulation begins on the date the payments are made, to the extent of those payments. For example, if a taxpayer files his/her calendar year 1988 income tax return on October 15, 1989, under an approved extension and includes a final payment of \$1,000 with the return, a petition for refund not in excess of \$1,000 may be filed after April 15, 1992, but before October 15, 1992. Thus, the taxpayer must file the petition for refund within three years of the extension date on which the taxes were paid.

(Section 40-2A-7(c)(2), Code of Alabama 1975) (Adopted through APA effective August 19, 1993, amended May 7, 1996)

### **810-14-1-.20. Limitation with Respect to Net Operating Loss Carrybacks.**

(1) If a petition for refund or credit relates to an overpayment of tax attributable to a net operating loss carryback, then in lieu of the three-year period described in Section 40-2A-7(c)(2) a., Code of Alabama 1975, the period shall be whichever of the following two periods expires later:

(a) the period which ends on the expiration of the fifteenth day of the fortieth month following the end of the taxable year in which of the net operating loss was incurred which resulted in the carryback; or

(b) the period which ends with the expiration of the period prescribed in 26 USC Section 6511

(c) (relating to an agreement (waiver) extending the period for assessment of tax) within which a petition for refund may be filed with respect to the taxable year in which the net operating loss was incurred which resulted in the carryback, except that:

(i) with respect to an overpayment attributable to a net operating loss carryback to any year because of a certification issued to the taxpayer under 26 USC Section 317 (the Trade Expansion Act of 1962), the period shall not expire before the expiration of the sixth month following the month in which such certification is issued to the taxpayer, and

(ii) with respect to an overpayment attributable to the creation of, or an increase in, a net operating loss as a result of the elimination of the excessive profits by a renegotiation (as defined in 26 USC Section 1481(a)(1)(A)), the period shall not expire before September 1, 1959 or the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is later.

(Act 92-186) (Adopted through APA effective August 19, 1993)

**810-14-1-.21. Procedures if Refunds Granted; Credit of Refund; Payment of Other Taxes; Payment of Interest.**

(1) If a petition is granted, or the Department, the Administrative Law Division, or a court otherwise determines that a refund is due, the overpayment shall be refunded to the taxpayer by the state, county, municipality, etc. Interest at the rate established by Section 40-1-44, Code of Alabama 1975, will be accrued and included in such refund.

(2) Whenever any petition for refund is granted, the Department may first credit any overpayment, plus applicable interest, against any other outstanding final tax liabilities due and owing by the taxpayer. In the case of income taxes, any overpayment shall also be subject to the setoff provisions of Section 40-18-100, et. seq. Code of Alabama 1975. Any balance which might then be due to the taxpayer shall be refunded. The taxpayer shall be provided with written notice as to the amount of overpayment, the amount credited for payment to other taxes, and the amount being refunded.

(3) An outstanding final tax liability is:

(a) a final assessment;

(b) an admitted liability on a tax return filed by or on behalf of the taxpayer;

(c) a liability to which the taxpayer has consented in writing to the amount due; or

(d) a liability resulting from an attempted payment of taxes by a check that was not honored by the bank for any reason.

(Section 40-2A-7(c)(4), Code of Alabama 1975) (Adopted through APA effective August 19, 1993, amended May 7, 1996)

**810-14-1-.22. Denial or Revocation of Licenses, Account Numbers, Permits and Certificates (Including Motor Vehicle Certificates of Title).**

(1) Denial of Licenses, Account Numbers, Permits, and Certificates (including Motor Vehicle Certificates of Title).

(a) If upon a review and/or investigation of an application for any license, account number, permit, or certificate it is determined that the requested license, account number, permit, or certificate should not be issued, applicants for each license, account number, permit, or certificate shall be notified in writing of the denial of their application by the Department.

(b) The Code of Alabama 1975, contains multiple reasons for denying the issuance of a motor vehicle license plate. These reasons include, but are not limited to the following:

1. failure to prove payment of ad valorem taxes (Section 40-12-253, Code of Alabama 1975); 2. failure to prove payment of sales or use taxes (Section 40-23-104(e), Code of Alabama 1975); 3. failure to prove payment of the federal heavy vehicle excise tax (Section 32-6-58, Code of Alabama 1975); or
4. failure to present a copy of an application for certificate of title to the vehicle, a duplicate certificate of title to the vehicle, or a copy of the application for a replacement certificate of title (Section 32-8-32, Code of Alabama 1975).

(c) The Department may deny the issuance of a motor vehicle license plate by written notification, if any one or more of the prerequisites noted in paragraph (b) above has not been met.

(d) When the Department receives a telephone request from a county motor vehicle license plate issuing official on behalf of an applicant and said applicant has yet to pay the additional registration required to obtain a personalized or prestige license plate (i.e., the vehicle owner has no financial interest in the request), the Department may deny the request by telephone response, instead of providing a written denial.

(e) Written notification of a denial shall be by first class mail to the applicant's last known address. This notification shall reference the nature of the denial, state the reason(s) or basis for the denial, and advise the applicant of the right to appeal the denial to the Administrative Law Division within thirty (30) days.

(2) Revocation of License, Account Numbers, Permits, and Certificates (including Motor Vehicle Certificates of Title).

(a) In general, whenever any license, account number, permit, or certificate is revoked by the Department, the holder of said license, account number, permit, or certificate shall be notified in writing of the revocation.

(b) Written notification of the revocation shall be by first class mail to the license, account number, permit, or certificate holder's last known address. This notification shall reference the license, account number, permit, or certificate being revoked; state the reason(s) for the revocation; state the effective date of the revocation; and advise the holder of the right to appeal the revocation to the Administrative Law Division within thirty (30) days of the date the notice is mailed.

(c) Written notification by the Department shall not be required when any license, account number, permit, or certificate is revoked by the Department at the written request of the holder of any such license, account number, permit, or certificate. A completed business closing form or similar written evidence received by the Department from the holder of any license, account number, permit, or certificate shall constitute a written request from the holder that such license, account number, permit, or certificate be revoked.

(Act 92-186) (Adopted through APA effective August 19, 1993)

### **810-14-1-.23. Refunds of Motor Vehicle Registration Fees.**

(1) In order to expedite the refunds of registration fees to Alabama taxpayers, the Department may, by mutual agreement, transfer its duties/responsibilities of refunding motor vehicle registration fees to the probate judges, license commissioners, or other license plate issuing officials, effective October 1, 1992.

(2) Under the authority of Sections 40-12-23 and 40-12-24, Code of Alabama 1975, the county issuing official will determine whether any taxpayer has "by mistake of fact or law" paid registration fees that either were not due or were excessive. Generally, such refunds result from taxpayers paying registration fees for a vehicle that had previously been sold or from a taxpayer paying the registration fees twice for the same vehicle in the same registration period. County issuing officials are not authorized to refund registration fees for the unexpired portion of the registration year.

(3) In order to issue refunds, county issuing officials shall request that the taxpayer either surrender the original registration receipt or provide a statement that the receipt was surrendered to the official responsible for collecting ad valorem taxes.

(4) When issuing refunds county issuing officials shall request, when applicable, the surrender of the license plate and/or revalidation decals. Such license plates/decals shall be retained by the county officials for audit by the Examiners of Public Accounts.

(5) At the end of each reporting period, each county issuing official will prepare a summary of refunds given. This summary shall show the distribution of the monies collected and the credit taken for the

refunds as a line item on the Motor Vehicle Report.

(Act 92-186) (Adopted through APA effective August 19, 1993)

#### **810-14-1-.24. Appeals to the Administrative Law Division - Authority of Administrative Law Judge.**

(1) **Notice of Appeal - Form** A notice of appeal to the Administrative Law Division must specify the taxpayer's name and address, the act or refusal to act that is the subject of appeal, the grounds for the appeal, and the relief sought. If the notice of appeal does not contain sufficient information, the taxpayer may be required to provide such additional information as directed by the Administrative Law Judge. In such cases, the Department's time for filing an answer shall be suspended and the Department shall be allowed such time to file an answer as directed by the Administrative Law Judge.

#### **(2) Department's Answer to Notice of Appeal**

(a) The Administrative Law Division shall notify the Legal Division that a notice of appeal has been filed, and the Legal Division must file an answer to the notice of appeal with the Administrative Law Division within thirty (30) days from receipt of such notice or as otherwise allowed by the Administrative Law Judge. The Administrative Law Judge may, for good cause, allow the Department up to sixty (60) days additional time to file an answer. Any request for additional time must be made in writing to the Administrative Law Division within the time allowed for filing an answer, with a copy to the taxpayer or the taxpayer's representative. The request must set out the specific reasons why additional time is necessary. Additional time to file an answer may also be granted, without a written request, at the discretion of the Administrative Law Judge.

(b) A request for additional time by the Legal Division shall suspend the time for filing an answer, and the Department shall thereafter have such time to answer (not to exceed 60 days) as allowed by the Administrative Law Judge.

(3) **Failure to Comply with Statute or Order - Authority of Administrative Law Judge.** The Administrative Law Judge has general authority over all matters before the Administrative Law Division. If a taxpayer or the Department fails to comply with any statute or regulation concerning appeals to the Administrative Law Division or with any "preliminary order" issued by the Administrative Law Judge, the Administrative Law Judge shall have discretion to dismiss the appeal, grant all or part of the relief sought by the taxpayer, or take any other action appropriate under the circumstances. Such action shall be designated an "order dismissing appeal" or "order granting relief to taxpayer," as appropriate under the circumstances, from which either party may appeal as allowed by Sections 40-2A-9(b) and 40-2A-9(g), Code of Alabama 1975. The order of the Administrative Law Judge shall be upheld by the circuit court unless the court finds an abuse of discretion by the Administrative Law Judge or that the order is otherwise

unreasonable.

(4) **Appeal of Case Voluntarily Dismissed by Taxpayer** A taxpayer may request the Administrative Law Judge to dismiss an appeal before the Administrative Law Division at any time before entry of an "opinion and preliminary order" or, if no "opinion and preliminary order" has been entered, prior to entry of a "final order" in the case. If an appeal is voluntarily dismissed, the dismissal shall be designated a "final order dismissing appeal," which may be appealed to the circuit court within thirty (30) days as provided by Section 40-2A-9(g), Code of Alabama 1975. All other applicable requirements for an appeal to the circuit court must be satisfied.

(a) The intent of this paragraph is to allow a taxpayer to dismiss any appeal to the Administrative Law Division without prejudice any time prior to entry of an order on the merits by the Administrative Law Judge. The taxpayer will then be allowed thirty (30) days after entry of the "final order dismissing appeal" to appeal the substance of the matter in dispute, i.e. final assessment, refund, etc., to circuit court.

(5) **Opinion and Preliminary Order** The Administrative Law Judge may, in the appropriate circumstances, issue an "opinion and preliminary order" setting forth findings of facts and conclusions of law and directing the Department or the taxpayer to take additional action as necessary under the circumstances (for example, recalculate tax or refund, produce additional records, etc.). In such cases, a subsequent "final order" will be issued from which either party may appeal.

(6) **Appeal** A "preliminary order" as provided by Section 40-2A-9(b), Code of Alabama 1975, or an "opinion and preliminary order" as provided in paragraph (5) above are not appealable orders. Only a "final order" designated as such may be appealed, or an "order dismissing appeal" as provided in paragraph (3) above; or a "final order dismissing appeal" as provided in paragraph (4) above, may be appealed to circuit court.

(7) **Application for Rehearing**

(a) Either party may file an application for rehearing within fifteen (15) days after entry of a "final order." Either party may also file an application for rehearing within fifteen (15) days after entry of a "preliminary order" or "opinion and preliminary order" if the party asserts in good faith that the facts or conclusions of law set out therein are incorrect, or that the action required by the "preliminary order" or "opinion and preliminary order" is unreasonable.

(b) A timely filed application for rehearing of a "final order" shall suspend the time for taking an appeal to circuit court. In such cases, an appeal to circuit court may be taken within thirty (30) days after entry of a "final order on application for rehearing." If an application for rehearing is filed relating to a "preliminary order" or an "opinion and preliminary order," then the Administrative Law Judge shall issue a "order on application for rehearing." Such order is not appealable to circuit court, and no appeal may be taken until a "final order" is entered in the matter.

(Act 92-186) (Adopted through APA effective August 19, 1993)

**810-14-1-.25. Release of Lien Information to Third Parties.**

(1) **SCOPE** This regulation establishes a procedure whereby third parties may be given information regarding the amount required to release the state tax lien. It further provides for the release of such information to purchasers and sellers of properties, and their agents, on which a state tax lien has attached.

(2) **DEFINITIONS** The following terms have the meanings ascribed to them for purposes of this regulation.

(a) **Third parties** Any entity or individual which holds a lien on real or personal property of the taxpayer which competes with any lien held by the Department. Such third parties may include mortgagees, the Internal Revenue Service, judgment creditors, and other holders or prospective holders of a security interest in property of the taxpayer. Third parties may also mean any purchaser, closing attorney, escrow agent, or real estate agent who is a party to a transaction in which the real or personal property of a taxpayer is being transferred subject to the Department's lien.

(b) **Verifiable electronic request** A request made through telecommunication channels (i.e., facsimile machines or modems) that has some means of verification as to the authority of the party requesting the information.

(3) **PURPOSE** The purpose of this regulation is to provide for the orderly determination of the amount of competing liens attaching to property of the taxpayer.

(4) **PROCEDURE**

(a) Whenever any third party wishes to secure information regarding an outstanding tax lien, he shall provide the Department with a written or verifiable electronic request for the information.

(b) Each written or verifiable electronic request made by a third party must specify the following:

1. the party making the request; 2. the party's relationship to the taxpayer; 3. the reason for the request; 4. the property which is being purchased or sold; and
5. provide a copy of any instrument giving the third party a competing interest in the property of the taxpayer.

(c) Whenever it is determined that the withholding of such information pending receipt of a written or verifiable electronic request will impair the ability of the taxpayer to close a transaction relating to the transfer of property, such requirement may be waived at the discretion of the Department.



(d) The Department reserves the right to deny any request for information when it has not been adequately established to the Department's satisfaction that the requesting party has a legitimate need for the requested information.

(Act 92-186) (Adopted through APA effective June 30, 1992, amended August 19, 1993)

**810-14-1-.26. Release of Information Necessary to Comply with Sections 40-23-25, 40-23-82, and 40-12-224, Code of Alabama 1975.**

(1) **SCOPE** This regulation relates to the authority of the Department to release information necessary for sellers of a business or stock of goods to comply with Sections 40-23-25, 40-23-82, and 40-12-224, Code of Alabama 1975.

(2) **DEFINITIONS** The following terms have the meanings ascribed to them for purposes of this regulation.

(a) **Taxes** Unless otherwise stated, this term refers to sales, use, and leasing taxes.

(b) **Purchaser** An individual, partnership or corporation which is purchasing or has purchased a business or stock of goods.

(c) **Seller** An individual, partnership or corporation, which is selling or has sold a business or stock of goods.

(d) **Verifiable electronic request** A request made through telecommunication channels (i.e., facsimile machines or modems) that has some means of verification as to the authority of the party requesting the information.

(3) **PURPOSE** The purpose of this regulation is to establish a specific procedure whereby the purchaser or seller of a business or stock of goods may be provided with specific information regarding taxes paid or taxes due and unpaid by the seller so as to comply with Section 40-23-25, 40-23-82 or 40-12-224, Code of Alabama 1975.

(4) **PROCEDURE**

(a) A seller of a business or stock of goods subject to the provisions of Section 40-23-25, 40-23-82, or 40-12-224, Code of Alabama 1975, may obtain a certificate from the Department within 30 days of the date he sold his business or stock of goods showing that all taxes have been paid or that no taxes are due. The certificate may be furnished to the seller upon payment of all taxes which have accrued prior to the date of the sale.

(b) A purchaser of a business or stock of goods subject to the provisions of Section 40-23-25,

40-23-82, or 40-12-224, Code of Alabama 1975, may request and obtain a certificate from the Department prior to the purchase showing that all outstanding tax, penalty, and interest has been paid over to the Department as of the date of the request.

1. Whenever a purchaser wishes to secure information in order to comply with the provisions of Sections 40-23-25, 40-23-82, and/or 40-12-224, Code of Alabama 1975, the purchaser shall provide the Department with a written or verifiable electronic request for the information.

2. Each written or verifiable electronic request made by a purchaser shall provide the following:

(i) the legal name, mailing address, phone number, and signature of the party making the request;

(ii) an affirmative statement that the requesting party is entitled to the information requested pursuant to Section 40-2A-10, Code of Alabama 1975, and that the request is necessary in order for the requesting party to comply with the provisions of Sections 40-23-25, 40-23-82, and/or 40-12-224, Code of Alabama 1975;

(iii) the legal name and address of the party from whom the purchaser is purchasing a business or stock of goods; and

(iv) if available, the state sales, state use, state rental, local sales, and/or local use tax account number(s) and the social security number or federal employer identification number of the party from whom the purchaser is purchasing a business or stock of goods.

3. The Department reserves the right to deny any request for information when it has not been adequately established to the Department's satisfaction that the requesting party has a legitimate need for the requested information. The Department may contact the seller of a business or stock of goods to establish the legitimacy of the requesting party's request for information.

(c) If the taxes are not current, the Department may issue the purchaser or seller a "Certificate of Noncompliance," which will specify the type of tax and the periods of tax which have not been paid. The Department may also send a letter of noncompliance to the purchaser or seller of the business which will contain, if known, the amount required to bring the business into compliance with the sales and use tax laws up to the anticipated date of purchase.

(d) In the event the Department learns, or otherwise has reason to believe that a business or stock of goods has been sold and that the purchaser has not complied with the provisions of Section 40-23-25, 40-23-82, or 40-12-224, Code of Alabama 1975, the Department may make a demand for payment, and, if not paid, enter an assessment against the successor. Any demand or assessment so entered shall clearly identify the successor as such, as well as the previous business entity.

(e) Any disclosure of amounts of tax due made by the Department to a business entity that is believed to be a successor, and which is subsequently determined not to be a successor as contemplated by Sections 40-23-25, 40-23-82, and/or 40-12-224, Code of Alabama 1975, shall be deemed to have been made for the proper administration of the taxes and is an exception to the disclosure restrictions as provided at Section 40-2A-10, Code of Alabama 1975

(Section 40-2A-10(e), Code of Alabama 1975) (Adopted through APA effective June 30, 1992, amended effective August 19, 1993, Emergency September 24, 1993, amended January 25, 1994, amended May 7, 1996)

## **810-14-1-.27. Confidentiality of Tax Returns and Tax Return Information.**

(1) **SCOPE** This regulation applies to the confidentiality of tax returns and tax return information and requires that storage of such data be restricted by the Department of Revenue.

(2) **DEFINITIONS** The following terms have the meaning ascribed to them for purposes of this regulation, unless the context clearly indicates otherwise.

(a) **Tax return** Any tax or information return or report, declaration of estimated tax, claim or petition for refund or credit, or petition for reassessment or protest that is required by, or provided for, or permitted under the provisions of the tax laws of this state which is stored in either a hard copy paper format or electronic format.

(b) **Tax return information** A taxpayer's identity, the nature, source or amount of the taxpayer's income, gains, losses, formulary apportionment factors, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, deficiencies, over assessments, or tax payments, whether the taxpayer's return was, is being, or will be, examined or subject to other investigation for processing; or any other data received, recorded by, prepared by, furnished to, or collected by the Department with respect to a tax return or with existence of liability (or the amount thereof), or by any person under the laws of this state for administration, collection or enforcement of the tax laws, including tax, additions to tax, penalty, interest, fine, or other imposition, or offense; such information may be stored in either a hard copy paper format or electronic format.

(3) **PURPOSE** The purpose of this regulation is to ensure that the confidentiality of all tax returns and tax return information is stored and maintained by the Department.

(4) **PROCEDURE** To accommodate state confidentiality statutes, any access to tax returns and tax return information must be for tax administrative, collection, or enforcement purposes.

(a) To ensure that access to all tax returns and tax return information is restricted for tax administrative, collection, or enforcement purposes, the Department shall store and maintain all

tax returns and tax return information in a manner which allows access to such returns and return information only to employees and agents of the Department, unless access to such information is covered by separate statute or regulation.

(Act 92-186) (Adopted through APA effective August 19, 1993)

**810-14-1-.28. Disclosure of Statistical Information.**

(1) **SCOPE** This regulation applies to the disclosure of statistical tax data.

(2) **DEFINITIONS** The following term has the meaning ascribed to it for purposes of this regulation, unless the context clearly indicates otherwise.

(a) Statistical Information. Any aggregate tax information which is compiled and/or assembled in a form that cannot be reasonably associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(3) **PURPOSE** The purpose of this regulation is to specify the procedures to be followed to disclose statistical data.

(4) **PROCEDURE** Statistical tax information is the only tax information which shall be disclosed.

(a) Before any statistical tax information is disclosed outside the Department in any manner by an employee or agent of the Department, such employee or agent must have prior written permission by the Commissioner or his delegate to release such information.

(Act 92-186) (Adopted through APA effective August 19, 1993)

**810-14-1-.29. General Disclosure and Exchange of Information Guidelines.**

(1) **SCOPE** Except as provided by law, it is unlawful for any person (other than the taxpayer or the taxpayer's authorized representative) to print, publish, or disclose, without the written permission or approval of the taxpayer, in any manner any information pertaining to a particular tax return without written authorization from the Commissioner or as otherwise provided by law. The law provides for the exchange of tax returns and return information between the Department and certain other entities. This regulation applies to the inspection of all tax returns and return information by persons other than employees and/or agents of the Alabama Department of Revenue, unless confidentiality of returns and/or return information is addressed under separate statute.

(2) **DEFINITIONS** The following terms have the meaning ascribed to them for purposes of this regulation, unless the context clearly indicates otherwise.

(a) **Inspection** A review of tax returns and/or return information.

(b) **Return** Any tax or information return or report, declaration of estimated tax, claim or petition for refund or credit, or petition for reassessment or protest that is required by, or provided for, or permitted, under the provisions of the tax laws of this state.

(c) **Return information** A taxpayer's identity, the nature, source or amount of his income, gains, losses, formulary apportionment factors, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, deficiencies, over-assessments, or tax payments, whether the taxpayer's return was, is being, or will be, examined or subject to other investigation for processing. This term also includes any other data received, recorded by, prepared by, furnished to, or collected by the Department or any other person under the laws of this state with respect to a tax return or with respect to the determination of the existence, or possible existence of liability (or the amount thereof); provided, that this information will be used only for administration, collection, or enforcement of the tax laws, including tax, additions to tax, penalty, interest, fine, or other imposition, or offense.

1. "Return information" does not include, however, data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. "Return information" also does not include information obtained from the Internal Revenue Service, the disclosure of which is prohibited by the terms of the agreement between the Service and the Department.

2. For purposes of the sales and use tax, "return information" shall also include whether the taxpayer is authorized to use a direct pay permit and any information related thereto; and the names of customers and any other relevant information related to specific sales and use tax transactions, or information acquired by audit of taxpayers' records.

(d) **Statistical information** Any aggregate tax information which is compiled and/or assembled in a form that cannot be reasonably associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(e) **Authorized persons** Any duly authorized tax agent, official, or designated representative of another Alabama state, municipal, or county government agency, federal government agencies, any association of state government tax agencies, and any state government tax agencies of other states who have been authorized to request, inspect, or receive tax returns or return information through the official custodian of the records.

(f) **Official custodian of the records** The Department's Disclosure Officer and/or other designated Department employees.

(g) **Verifiable electronic means** This term refers to tax information which is requested

or submitted through telecommunication channels (i.e., facsimile machines or modems) that has some means of verification as to the authority of the party requesting or submitting the tax information.

(3) **PURPOSE** The purpose of this regulation is to authorize the inspection of tax returns and return information in the custody of the Department by authorized persons.

(4) **PROCEDURE**

(a) An agreement to allow inspection of tax returns and return information or an exchange of tax returns and return information must be approved by the Commissioner or his delegate.

(b) An agreement may provide for the inspection or exchange of information for a specific return, or may provide for the regular or routine exchange of returns or information on such basis as the parties may agree.

(c) Unless prior arrangements have been made and approved by the Commissioner or his delegate, requests for tax returns and/or return information by persons other than employees and/or agents of the Department shall be in writing or by verifiable electronic means and must indicate, if available, the following:

1. the tax administration reason for the exchange;
2. the name and address of each taxpayer for whom tax returns and/or return information is requested;
3. the taxpayer's social security number and/or federal identification number, if available;
4. the inclusive dates for tax information requested, when applicable; and
5. any other information which may help facilitate the exchange, such as taxpayer's legal name, business name, address, and/or a Department tax identification number(s).

(d) Any agreement approved by the Commissioner or his delegate shall be valid for the term specified in such agreement, or as may be mutually agreed to by the parties. An agreement may be canceled or revoked at any time by the Commissioner or his delegate upon due notice to the other party. An agreement will automatically be revoked if the other party terminates the reciprocal privileges of the Department.

(e) All agreements entered into by the Commissioner or his delegate pursuant to this regulation shall be available for public inspection in the office of the Department's Disclosure Officer.

(f) Inspection of income tax returns and/or income tax return information by county and municipal representatives or by federal agencies, other than the Internal Revenue Service, is

prohibited. Inspection by other authorized persons is allowed, provided that each party allows the Department the reciprocal privilege of inspecting income tax returns and receiving income tax information. Inspection of income tax returns and/or income tax return information in possession of the Department by any person, other than authorized persons, is prohibited except upon order of a court.

(g) Inspection of tax returns, except income tax returns and/or return information, by county and municipal tax collecting authorities shall be according to the procedure hereinafter described, unless inspection is strictly prohibited or addressed by other statute:

1. The tax collecting authority shall request the governing body of the municipality or county, as the case may be, to secure the information desired.

2. On receipt of the request for information the governing body shall pass a resolution in the form set out on the following page:

### A RESOLUTION

WHEREAS, the information in the tax files of the Department of Revenue is needed for use in establishing and verifying liability for taxes levied against the persons, firms, or corporations named in the list attached hereto and made a part hereof, who are known to be liable for such taxes or who are with probable cause believed to be liable for such taxes.THEREFORE, IT IS RESOLVED that the Commissioner of Revenue be requested in writing to make the needed tax information available. Adopted by (insert name of the governing body) on this the \_\_\_\_\_ day of \_\_\_\_\_, (insert year of adoption). Approved: \_\_\_\_\_  
 Title ATTEST: \_\_\_\_\_  
 Title

### CERTIFICATE

The foregoing is a true and correct copy of a resolution duly adopted by (insert name of the governing body) on the \_\_\_\_\_ day of \_\_\_\_\_, (insert year of adoption).

[Date of Certification] BY \_\_\_\_\_  
 \_\_\_\_\_  
 Title

3. A certified copy of the resolution with a list of taxpayers attached shall be forwarded to the Commissioner of Revenue with a request in writing for the information. The request must set out the information desired and shall specify the period(s) to be covered, the business' legal name or individual owner's name, partnership name or corporate name, taxpayers' addresses, and applicable Department tax identification number(s) if known. The written request shall be in the following form:

(Insert the name of the Commissioner of Revenue)  
 Commissioner of Revenue

50 North Ripley Street  
Gordon Persons Building

Montgomery, Alabama 36132 Re: Request for Information Dear(Insert the name of the Commissioner of Revenue): It is requested that you make available to the undersigned, or their representative, tax information from your files for use in determining the amounts of taxes due by the persons, firms, or corporations named in the list submitted herewith. You will find attached to this request a certified copy of the resolution adopted by (insert name of the governing body) duly authorizing this request. The information we need is (state here the information wanted: gross receipts of, tax paid by, or other) the businesses listed during the period beginning with \_\_\_\_\_, (insert first year of information requested).

Yours very truly,

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Name of Governing Body

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By

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Title

(h) Inspection of aggregate tax information by county and municipal representatives shall be allowed on an annual basis for any one type of tax, unless additional requests are approved by the Commissioner or his delegate.

(i) Inspection of franchise tax returns and/or return information by county representatives will be allowed only upon specific authority of the Commissioner or his delegate.

(j) The Department may issue a good standing certificate to a requesting person with respect to a corporation's franchise tax returns. For purposes of this regulation, a good standing certificate shall disclose whether the corporation has filed all Alabama franchise tax returns due and paid the taxes associated with these returns. This certificate may only be issued for domestic and foreign franchise taxes on corporations doing business in Alabama and shall not include actual tax amounts due or paid.

(k) If confidentiality of returns or return information is addressed under separate statute, then inspection of such returns or return information may continue to be allowed or may be restricted as deemed necessary through other statute or regulation.

(l) Inspection of tax returns and/or return information by non-taxing legal authorities such as the Alabama Bureau of Investigation or the Federal Bureau of Investigation will be allowed upon approval of the chief of the tax division and an order of the Commissioner, unless specifically prohibited by other statute.



(m) Inspection of third party records in possession of the Department through subpoena and/or other legal means by persons other than employees and/or agents of the Department is prohibited, except upon order of a court, issuance of an IRS summons, or with the consent of the third party which supplied the records to the Department in compliance with its subpoena.

(n) If any employee or agent of the Department discloses any tax return information, including statistical information, without permission from the Commissioner then such employee or agent shall be subject to disciplinary action in accordance with the Alabama Personnel Department's rules and regulations.

(Section 40-2A-10, Code of Alabama 1975) (Adopted through APA effective June 30, 1992, amended August 19, 1993, amended May 7, 1996)

### **810-14-1-.30. Penalty for Failure to Timely Pay Tax.**

(1) When a taxpayer fails to pay any tax shown as due on a return required to be filed on or before the statutory due date, a penalty of 1 percent per month or 1 percent for each fraction of a month thereof, not to exceed 25 percent, shall be assessed in addition to interest at the rate specified in Section 40-1-44, Code of Alabama 1975. For example, where a taxpayer timely files an income tax return due on April 15, but fails to pay the amount shown as due on the return until September 30, a nonpayment penalty of 6 percent plus interest applies.

(2) For any tax for which no return is required, there shall be a penalty of 10 percent of the tax not paid on or before the due date.

(a) When any tax for which a monthly or quarterly return is required has not been paid on or before the date prescribed for payment of the tax (including any approved extension) there shall be a penalty of 10 percent of the amount of the tax shown as due on the return and unpaid on or before the due date (inclusive of any approved extension).

(b) The following are examples of taxes which are subject to the 10 percent penalty:

1. dual user tax, Section 40-17-5, Code of Alabama 1975; 2. gasoline tax, Section 40-17-33, Code of Alabama 1975; 3. motor fuels tax, Section 40-17-5, Code of Alabama 1975; 4. lubricating oil excise tax, Section 40-17-186, Code of Alabama 1975; 5. tobacco tax, Section 40-25-2(g), Code of Alabama 1975; 6. hazardous waste fee, Section 22-30B-5, Code of Alabama 1975; 7. dog race track pari-mutuel pool tax, Section 40-26A-3, Code of Alabama 1975; 8. horse wagering fee, Section 11-65-29, Code of Alabama 1975; 9. state sales tax, Section 40-23-7, Code of Alabama 1975; 10. state use tax, Section 40-23-68, Code of Alabama 1975; 11. state rental or leasing tax, Section 40-23-7, Code of Alabama 1975; 12. state utility gross receipts tax, Section 40-23-7, Code of Alabama 1975; 13. state lodgings tax, Section 40-26-3, Code of Alabama 1975; 14. state contractors gross receipts tax, Section 40-23-7, Code of Alabama 1975; 15. state cellular radio telecommunication services tax, Section 40-21-

121, Code of Alabama 1975; 16. state hospital tax, Section 40-26B-42, Code of Alabama 1975; 17. state nursing facility tax, Section 40-26B-22, Code of Alabama 1975; 18. state pharmaceutical providers tax, Section 40-26B-3, Code of Alabama 1975; 19. counties sales, use, and lodgings taxes, and Section 40-23-7, Code of Alabama 1975; 20. municipalities sales, use, and lodgings taxes, Section 40-23-7, Code of Alabama 1975; 21. utility license tax, Section 41-21-50, Code of Alabama 1975; 22. coal severance tax, Section 40-13-3, Code of Alabama 1975; 23. forest products severance tax, Section 9-13-86, Code of Alabama 1975; 24. withholding tax, Section 40-18-74, Code of Alabama 1975; 25. income tax estimate payments, Section 40-18-83, Code of Alabama 1975; and  
26. oil and gas severance taxes, Sections 9-17-26(b) and 40-20-5, Code of Alabama 1975

(3) The "failure to timely pay" penalty shall apply for any tax in which attempted payment is made by a check returned by the bank due to insufficient funds.

(4) The "failure to timely pay" penalty may be waived in whole or in part by the Department upon a determination of reasonable cause.

(Section 40-2A-11(b), Code of Alabama 1975) (Adopted through APA effective August 19, 1993, amended May 7, 1996)

### **810-14-1-.31. Penalty for Underpayment Due to Negligence.**

(1) If any part of an underpayment of any tax is due to negligence or disregard of rules and regulations, but without intent to defraud, a 5 percent penalty on the underpayment attributable to negligence or disregard shall be added.

(a) The term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of Title 40, and the term "disregard" includes any careless, reckless, or intentional disregard.

(2) The "negligence" penalty may be imposed for, but is not limited to, the following situations:

(a) failure of the taxpayer to keep or maintain adequate records as required by law and/or Department rules and regulations;

(b) a significant discrepancy between actual and reported taxable measures in the absence of an adequate explanation by the taxpayer;

(c) the omission of a specific item of income for income tax purposes;

(d) the significant overstatement of deductions, exemptions, and/or credits;

(e) failure by the taxpayer to provide all pertinent data to his/her agent for preparing tax returns. Even if all data is furnished to the tax return preparer, the taxpayer still has a duty to read the return for accuracy; or

(f) a mistake of law or fact not made in good faith or based on reasonable grounds.

(3) The following are examples of situations in which the negligence penalty shall not be imposed:

(a) a minor discrepancy due to a clerical error,

(b) a minor understatement of reported taxable measure,

(c) a minor overstatement of deductions, exemptions, and/or credits.

(4) The negligence penalty will not be imposed if the essential facts are disclosed on the return to allow for full disclosure of transactions in such a manner that the facts are sufficient to enable an auditor to spot any possible discrepancies.

(5) The negligence penalty will generally not be imposed where failure to report income or to overstate a deduction is in good faith reliance on advice of a competent tax expert.

(Act 92-186) (Adopted through APA effective August 19, 1993)

### **810-14-1-.32. Penalty for Underpayment Due to Fraud.**

(1) Any person who willfully filed a false or fraudulent return shall be assessed for the amount of tax as determined by the Department from the best available information with respect to such taxpayer. To the amount of tax due, the Department shall add a penalty in an amount equal to 50 percent of that portion of such underpayment which is attributable to fraud. This penalty is in lieu of all other civil penalties.

(2) The term "fraud" shall include instances where there is intentional wrongdoing, usually involving an element of deception. Where direct evidence of fraud is not available, fraud may be determined from the circumstances surrounding the taxpayer's acts or omissions. The burden of proof on the issue of fraud shall be upon the Department. To establish fraud, the Department must clearly and convincingly prove that a tax deficiency is due to fraud with a deliberate intent to evade taxes. Negligence, even if it is gross, does not necessarily establish fraud.

(3) The fraud penalty may be imposed for, but is not limited to, the following situations:

(a) the taxpayer devises a fictitious scheme to evade taxes (examples of this include

setting up sham partnerships, doing business under a fictitious name, making fictitious sales of stock to claim a loss, etc.);

(b) the taxpayer deliberately conceals income with the intent to evade taxes;

(c) the taxpayer claims excessive deductions, exemptions, and/or credits (examples of this include claiming a false filing status, taking exemptions for nonexistent children, taking clearly personal expenses as business expenses, etc.)

(Act 92-186) (Adopted through APA effective August 19, 1993)

**810-14-1-.33. Penalty for Frivolous Return.**

(1) A "frivolous return" penalty of up to \$250 may be imposed if any return:

(a) does not contain information on which the substantial correctness of the self assessment may be judged, or

(b) contains information that on its face indicates the self assessment is substantially incorrect and is due to either a position which is frivolous or a desire (which appears on the purported return) to delay or impede the administration of the state tax laws.

(2) The frivolous return penalty may be imposed for, but is not limited to, the following situations:

(a) returns filed with only the date and signature;

(b) returns filed which contain altered or incorrect descriptions of line items or other altered provisions;

(c) knowingly filed on a form not compatible with the Department's processing system;

(d) returns filed which have references to spurious constitutional arguments instead of the required completion of the tax form;

(e) returns filed on which there is insufficient information to calculate the tax;

(f) returns filed on which the information presented is clearly inconsistent; or

(g) returns filed which show deliberate use of incorrect tax tables.

(3) The "frivolous return" penalty may not be imposed in the following situations:

(a) for an inadvertent mathematical or clerical error(s); or

(b) where the taxpayer files a substantially complete return, shows the correct amount of tax due, but refuses or is unable to pay the tax.

(Act 92-186) (Adopted through APA effective August 19, 1993)

**810-14-1-.33.01. Assessment and Waiver of Civil Penalties.**

(1) **SCOPE** This regulation applies to the assessment and waiver of civil penalties and does not include cases of negligence or fraud. Additionally, this regulation does not apply to penalties abated under Regulation 810-14-1-.05 dealing with the failure of the Department to comply with Section 40-2A-4 of the Code of Alabama 1975.

(2) **PROCEDURE** - Assessment.

(a) The Department may not assess civil penalties in instances in which the taxpayer acted in good faith. For purposes of this regulation, good faith includes, but is not limited to the following:

1. instances in which the taxpayer has been cooperative during an audit and has a history of timely filing tax returns and timely paying tax due; or 2. instances in which the taxpayer relied upon erroneous written advice furnished to the taxpayer by an employee of the Department if:

(i) the employee provided the written advice in good faith while acting in an official capacity; (ii) the written advice was reasonably relied on by the taxpayer; (iii) the written advice was given in response to a specific written request of the taxpayer; and

(iv) the penalties did not result from the taxpayer's failure to provide adequate or accurate information.

(b) The Department may not assess civil penalties when, as the result of a change in regulations, change in law, or court decision, it makes adjustments to a tax return(s) for a prior year(s) resulting in additional tax liability.

(c) The Department may not assess civil penalties when, as the result of a change in regulations, change in law, or court decision, it realizes that a tax return(s) should have been filed in a previous year(s); and the taxpayer voluntarily files the return(s) and pays the tax liability prior to being contacted by the Department or the taxpayer files the return(s) and pays the tax liability after notification.

**(3) PROCEDURE - Waiver.**

(a) If the Department assesses civil penalties, such Civil penalties shall be waived upon a determination of "reasonable cause." The burden of proving reasonable cause shall be on the taxpayer. The taxpayer should submit in writing a request that the civil penalty or penalties be waived for reasonable cause.

1. The taxpayer's written request for waiver of civil penalties should outline the "reasonable cause" basis of the request for waiver. The following events are sufficient to constitute "reasonable cause":

- (i) death, major illness, unavoidable absence; (ii) casualty or natural disaster; (iii) inability to obtain necessary records; (iv) nonrecurring honest mistake; (v) reliance on the advice of a competent tax advisor, and
- (vi) reliance on erroneous advise of ADOR personnel.

2. The above events are not be considered all inclusive in establishing "reasonable cause." Taxpayers are not foreclosed from clearly establishing other reasons that constitute "reasonable cause." 3. The taxpayer's written request for waiver of civil penalties should be made to the supervisor of the appropriate assessing section or division. The written request for waiver of civil penalties should be attached to an audit or tax return when it is presented to the supervisor for assessment proceedings or when the audit is paid.

4. Appeals made to the Administrative Law Division solely involving a request for penalty waiver shall be referred to the Department's Director for Taxpayer Advocacy for disposition.

(Section 40-2A-11(h), Code of Alabama 1975) (Adopted through APA effective February 23, 1996, amended February 16, 1999)

**810-14-1-.34. Interest on Underpayment of Tax.**

(1) Interest shall be added to any tax or other amount due the Department which is not paid by the due date. Interest on any delinquency shall be charged from the due date of the tax, except for the following:

(a) interest on delinquent license taxes levied under Chapter 12 of Title 40, Code of Alabama 1975, shall be charged from the delinquent date as provided in subsection (e) of Section 40-12-10, Code of Alabama 1975;

(b) interest on delinquent license tax and registration fees levied on motor vehicles shall be

charged beginning after the period allowed for registration or renewal; and

(c) interest on the freight lines and equipment companies tax levied in Section 40-21-52, Code of Alabama 1975, shall be charged from the delinquent date thereof.

(2) Interest shall be computed based on the underpayment rate established by the Secretary of the Treasury from time to time under the authority of 26 USC Section 6621.

(3) In determining the last date prescribed for payment, any extension of time granted for payment of tax or any other amount due shall be disregarded. The granting of an extension of time for filing a return does not relieve the taxpayer from liability for the payment of interest thereon during the period of the extension.

(Act 92-186) (Adopted through APA effective August 19, 1993)

#### **810-14-1-.34.01. Interest on Underpayment of Tax - Large Corporations.**

For "large corporate underpayment" as defined in I.R.C. Sec. 6621, the interest rate on underpayment shall be as prescribed by I.R.C. Sec. 6621(c)(1). (Section 40-1-44, Code of Alabama 1975 and Internal Revenue Code 26 U.S.C. 6621) (Adopted through APA effective February 16, 1999)

#### **810-14-1-.35. Interest on Refunds.**

(1) The Department shall pay interest on any refund computed from the date of overpayment to the Department, except as follows:

(a) Interest on a refund resulting from a net operating loss carryback shall be computed from the date the claim (amended return) giving rise to the refund is filed.

(b) Interest on a refund of any income tax previously paid through withholding or estimated payments, including a refund of such tax resulting from a net operating loss carryover deduction, shall be paid beginning 90 days after the due date of the return for which the refund is claimed, or the date such return is actually filed, whichever is later.

(2) Interest shall not be paid on any overpayment of the following taxes:

(a) taxes paid by entities for which a refund is allowed by Sections 40-9-12 and 40-9-13, Code of Alabama 1975;

(b) license taxes which are refunded pursuant to Sections 40-12-23 and 40-12-24, Code of Alabama 1975;

(c) gasoline taxes paid on gasoline used for agricultural purposes for which a refund is allowed by Division 3, Article 2, Chapter 17 of Title 40, Code of Alabama 1975;

(d) gasoline taxes paid on gasoline used for the static testing of engines for which a refund is allowed by Division 4, Article 2, Chapter 17 of Title 40, Code of Alabama 1975;

(e) the motor fuels excise tax levied by Section 40-17-141, Code of Alabama 1975, for which a refund or credit is allowed by Section 40-17-142, Code of Alabama 1975; and

(f) the tobacco taxes levied by Chapter 25 of Title 40, Code of Alabama 1975.

(Act 92-186) (Adopted through APA effective August 19, 1993)

**810-14-1-.36. Government Contract for Examination of Taxpayer's Records Where Compensation Contingent Upon Tax, Interest, Etc. Assessed or Collected.**

(1) It is the policy of this State to prohibit any arrangement between the Department of Revenue, a county, a municipality, or any other taxing authority within the State and a private auditing firm for the examination of a taxpayer's books and records, if the firm's compensation is determined, in whole or in part, by the amount of taxes assessed or collected. Any arrangement whereby the private auditing firm agrees or has an understanding with the taxing authority that all or a part of the firm's compensation otherwise payable will be waived or otherwise not paid if there is no assessment or no collection of tax or if less than a certain amount is assessed and/or collected is prohibited.

(2) For the purposes of this regulation, "tax" means and includes any tax, license fee, or other charge payable to the State of Alabama, any agency thereof, any county or municipality or agency thereof, or any other taxing authority within the State including, but not limited to, sales and use taxes, rental taxes, business license taxes, or franchise or any other fees or charges payable by the taxpayer on account of its activities or property in, or income, sales, gross receipts or the like derived from sources within, the State or any county or municipality. For purposes of this regulation, "private auditing firm" means and includes any person, firm or corporation that is not a governmental entity and that is engaged in the business, in whole or in part, on behalf of the State or any other taxing authority within the State such as counties, municipalities or any agency thereof, of auditing or examining the books and records of a taxpayer to determine whether one or more taxes have been properly collected, paid and/or remitted by the taxpayer.

(Section 40-2A-6, Code of Alabama 1975) (Adopted through APA effective February 1, 1995)



